

Halsbury's EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(1) MEANING OF EXTRADITION/1101. Extradition defined.

EXTRADITION (

1.

(1)

1101. Extradition defined.

In general, a state exercises criminal jurisdiction only over offences which occur within its geographical boundaries¹. Extradition is the formal surrender by one country to another, based on reciprocal arrangements² partly judicial and partly administrative, of an individual accused or convicted of a serious criminal offence committed outside³ the territory of the extraditing state and within the jurisdiction of the requesting state which, being competent by its own law to try and punish him, requests the individual's surrender⁴. It is to be distinguished from deportation (which is the process whereby the competent authorities require a person to leave and prohibit him from returning to a territory⁵) and from the return, or 'refoulement', of persons denied admission to a territory (which is the administrative act whereby such persons are returned to the territories whence they came⁶). Extradition is also to be distinguished from the exclusion of a person from one part of a sovereign state in pursuance of some such device as an exclusion order⁷, and from the procedures whereby deserters and absentees from the armed forces of designated countries, as well as from visiting forces, may be returned to the custody of the service authorities of the countries to which they belong⁸. Each of these mechanisms is essentially⁹ non-consensual and should be contrasted with the procedure by which prisoners may be transferred with their consent between the United Kingdom¹⁰ and other countries under international arrangements and then detained in the state to which they are transferred¹¹.

1 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97 at 100, [1999] 2 WLR 827 at 832, HL, per Lord Browne-Wilkinson.

2 *R v Secretary of State for Home Affairs, ex p Demetrious* [1966] 2 QB 194, sub nom *Re Demetrious* [1966] 2 All ER 998, DC.

3 It may be alleged that the individual may have committed the offence while physically present in the territory of the extraditing state, for example a conspiracy: see eg *R v Bow Street Magistrates' Court, ex p Raccagni* (17 December 1998) Lexis, Enggen Library, Cases File, DC; and PARA 1172 note 1 post.

4 See *Terlinden v Ames* 184 US 270 at 289, 22 S Ct 484 (1901). '[E]xtradition agreements are designed to ensure that persons who commit crimes in one country do not escape trial or punishment by fleeing abroad. Extradition arrangements have been transformed as a result of the invention of the jet aeroplane and the mutual acceptance by means of extradition treaties by and between countries of the integrity of their different legal systems. A criminal can flee from country to country with ease in order to avoid or postpone retribution. A suspect once apprehended can be returned for prosecution with equal speed. Extradition is only available in respect of serious offences and in circumstances which are not oppressive. Extradition treaties and legislation are designed to combine speed and justice': *Re Evans* [1994] 3 All ER 449 at 450-451, [1994] 1 WLR 1006 at 1008, HL, per Lord Templeman.

5 See the Immigration Act 1971 s 5(1); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 160. However, the effect of a deportation order may be to return a fugitive to a country desirous of prosecuting or punishing him for an offence for which he could not be extradited: *R v Governor of Brixton Prison, ex p Soblen* [1963] 2 QB 243 at 301, [1962] 3 All ER 641 at 660, CA, per Lord Denning MR.

6 See the Immigration Act 1971 s 4, Sch 2 para 8 (as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 152. The effect of such an act may be to return the fugitive to a country desirous of prosecuting him for an offence for which he could not to be extradited: see *R v Secretary of State for Home Affairs, ex p Soblen* [1963] 1 QB 829, [1962] 3 All ER 373, CA.

7 See the Immigration Act 1971 ss 3-6 (as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM.

8 See the Visiting Forces Act 1952 ss 1, 13 (both as amended) (see ARMED FORCES vol 2(2) (Reissue) PARAS 62, 64, 137, 138); and *R v Thames Justices, ex p Brindle* [1975] 3 All ER 71, [1975] 1 WLR 1400, DC; affd [1975] 3 All ER 941, [1975] 1 WLR 1400 at 1407, CA. See also the Mental Health Act 1983 s 86 (as amended), which provides for the removal of mentally disordered aliens from the United Kingdom: (see MENTAL HEALTH vol 30(2) (Reissue) PARA 548).

9 There may be consensual elements within these procedures. For example, the simplified procedure in cases falling under the Extradition Act 1989 Pt III (ss 7-17) (as amended) relies upon a waiver of rights by the individual: see s 14; and PARA 1192 post.

10 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

11 See the Repatriation of Prisoners Act 1984; and PRISONS vol 36(2) (Reissue) PARA 555 et seq.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(2) STATUTORY HISTORY/1102. Outline of statutory history.

(2)

1102. Outline of statutory history.

Prior to 1870, there was no coherent mechanism for facilitating extradition to foreign states¹. The precise requirements of the common law were doubtful but it later became recognised that the Crown could not surrender an alleged criminal even if it wished to do so, unless that surrender was authorised by legislation². This led to the mechanism of bilateral treaties between states which were then incorporated into domestic law by legislation³.

The first Act of Parliament dealing generally with extradition to foreign states was the Extradition Act 1870⁴. That Act covered all cases of extradition between the United Kingdom and foreign states, provided only that an Order in Council directed that the Act should apply to the arrangements between the United Kingdom and the relevant state⁵. Since the passing of the Extradition Act 1870, the law of the United Kingdom with regard to extradition depends entirely upon statute⁶. The Extradition Act 1870 was subsequently amended and supplemented⁷.

Extradition between the United Kingdom and territories within the Realm of the Crown has an older history. The Habeas Corpus Act 1679 had limited effect⁸. A fuller procedural code was established in 1843⁹ and later replaced by the Fugitive Offenders Act 1881. This was supplemented by the Fugitive Offenders (Protected States) Act 1915 and both were replaced by the Fugitive Offenders Act 1967. The 1967 Act controlled extradition between the United Kingdom and designated Commonwealth countries and designated United Kingdom dependencies¹⁰.

After a period of review¹¹, Part I of the Criminal Justice Act 1988¹² was enacted to introduce changes to the process of extradition. However, it was never brought into operation. The Extradition Acts 1870 to 1935, the Fugitive Offenders Act 1967 and certain provisions of the Criminal Justice Act 1988 were repealed and replaced by the Extradition Act 1989¹³. The Extradition Act 1989 is a consolidating Act and as such is presumed not to change the law¹⁴.

1 'Foreign state' is now defined by the Extradition Act 1989 as any state other than: (1) the United Kingdom; (2) a country mentioned in the British Nationality Act 1981 s 37, Sch 3 (countries whose citizens are Commonwealth citizens: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11); (3) a colony; (4) the Republic of Ireland; or (5) the Hong Kong Special Administrative Region: Extradition Act 1989 s 3(2) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 3). However, a state which is a party to the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) (see PARA 1121 post) may be treated as a foreign state: Extradition Act 1989 s 3(2). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. For the meaning of 'colony' see PARA 1106 note 6 post. As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 post.

2 *R v Governor of Brixton Prison, ex p Soblen* [1963] 2 QB 243 at 300, [1962] 3 All ER 641 at 659, CA, per Lord Denning MR (habeas corpus in the context of deportation).

3 See the Act for giving effect to a Convention between Her Majesty and the King of the French for the Apprehension of Certain Offenders (6 & 7 Vict, c 75) (repealed); the Act for giving effect to a Treaty between Her Majesty and the United States of America for the Apprehension of Certain Offenders (6 & 7 Vict, c 76) (repealed); the Act for giving effect to a Convention between Her Majesty and the King of Denmark for the mutual Surrender of Criminals (25 & 26 Vict, c 70) (repealed); and the Act for the Amendment of the Laws relating to Treaties of Extradition (29 & 30 Vict, c 121) (repealed).

4 The Extradition Act 1870 (now repealed) was passed following the recommendations of a Parliamentary Select Committee in 1868. The repeal by the Extradition Act 1989 of the Extradition Act 1870 does not affect an

Order in Council made under s 2 or the power to revoke or alter such an Order: Extradition Act 1989 s 37(3). Notwithstanding the repeal any forms that might have been used by virtue of the Extradition Act 1870 s 20 (repealed) may continue to be used and are deemed to be valid and sufficient in law: Extradition Act 1989 s 37(4). See also PARA 1194 post.

5 Extradition Act 1870 s 2 (repealed).

6 *R v Governor of Brixton Prison, ex p Soblen* [1963] 2 QB 243 at 299-300, [1962] 3 All ER 641 at 659-660, CA, per Lord Denning MR.

7 The Extradition Act 1870 was amended in particular by the Extradition Act 1873; the Extradition Act 1895; the Extradition Act 1906; the Extradition Act 1932; and the Counterfeit Currency (Convention) Act 1935 (all now repealed). These Acts were collectively known as the Extradition Acts 1870 to 1935.

8 The relevant provision (ie the Habeas Corpus Act 1679 s 15 was limited to capital offences): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

9 See the Act for the Better Apprehension of Certain Offenders (6 & 7 Vict, c 34) (repealed).

10 See the Fugitive Offenders Act 1967 ss 1, 2 (repealed).

11 See in particular the *Report of an Inter-Departmental Working Party, 'A Review of the Law and Practice of Extradition in the United Kingdom'* (May 1982); Green Paper '*Extradition*' (Cmnd 9421) (1985); White Paper '*Criminal Justice: Plans for Legislation*' (Cmnd 9658) (1986).

12 Ie the Criminal Justice Act 1988 Pt I (ss 1-22) (ss 1-21 now repealed).

13 See the Extradition Act 1989 s 37, Sch 2.

14 *R v Secretary of State for the Home Department, ex p Hill* [1997] 2 All ER 638 at 650, DC, per Hooper J.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(i) Introduction/1103. Application of the Extradition Act 1989.

(3) PRESENT STATUTORY STRUCTURE

(i) Introduction

1103. Application of the Extradition Act 1989.

The Extradition Act 1989 was enacted to consolidate enactments relating to extradition under the Criminal Justice Act 1988, the Fugitive Offenders Act 1967 and the Extradition Acts 1870 to 1935, with amendments to give effect to recommendations of the Law Commission¹.

The Extradition Act 1989 extends to Northern Ireland². Subject to the following provisions, Parts I to V of the Extradition Act 1989³ extend to the Channel Islands⁴ and the Isle of Man, and have effect as if each of them were part of the United Kingdom⁵. Her Majesty may by Order in Council⁶ direct that any provision contained in Parts I to V, in its application to any of the said Islands, is to have effect subject to such exceptions, adaptations or modifications as may be specified in the Order⁷. An Order in Council relating to any provision of the Extradition Act 1989 as it has effect in relation to Commonwealth countries or colonies⁸ may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient⁹.

1 Extradition Act 1989 long title; and see PARA 1102 ante. As to the Extradition Acts 1870 to 1935 see PARA 1102 note 7 ante. The provisions of the Extradition Act 1989 (with the exception of ss 7(3) (see PARA 1185 post), 10(3) (see PARA 1253 post), 14(2), (3) (see PARA 1192 post), 38, Sch 1 para 9(2) (see PARA 1215 post) which came into force on the passing of the Act, ie 27 July 1989) came into force at the end of the period of two months beginning with the day on which it was passed (ie 27 September 1989): s 38(1), (2), (3).

2 Ibid s 38(5).

3 Ie ibid Pts I-V (ss 1-25) (as amended): see s 29(1).

4 Ie the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies.

5 Extradition Act 1989 s 29(1). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. Schedule 1 para 18 has effect as to the application of Sch 1 (as amended) to the Channel Islands and the Isle of Man: s 29(4).

6 At the date at which this volume states the law no such Order in Council had been made.

7 Extradition Act 1989 s 29(2).

8 For the meaning of 'colony' see PARA 1106 note 6 post.

9 Extradition Act 1989 s 29(3).

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(i) Introduction/1104. The two procedures governing extradition under the Extradition Act 1989.

1104. The two procedures governing extradition under the Extradition Act 1989.

The Extradition Act 1989 provides two procedures governing the extradition of an individual from the United Kingdom¹ to the requesting state. The first is that under Part III of the Act² and the second is that under Schedule 1 to the Act³. In any case, it is necessary to identify which (if either) of these procedures governs the arrangements between the United Kingdom and the requesting state.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See the Extradition Act 1989 Pt III (ss 7-17) (as amended); and PARAS 1105, 1165 et seq post.

3 See ibid s 1(3), Sch 1 (as amended); and PARAS 1110 et seq, 1194 post.

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1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(ii) Extradition under Part III of the Extradition Act 1989/1105. Part III cases generally.

(ii) Extradition under Part III of the Extradition Act 1989

1105. Part III cases generally.

Extradition is governed by Part III of the Extradition Act 1989¹ where the state seeking extradition is a designated Commonwealth country, a colony, the Hong Kong Special Administrative Region or a foreign state with which arrangements have been made that Part III should be available². Cases which fall to be governed by Part III are commonly referred to as 'Part III cases'.

The arrangements between the United Kingdom³ and the foreign state may either be:

- 1 (1) general extradition arrangements (arrangements of a general nature made with one or more states and relating to the operation of extradition procedures under Part III of the Extradition Act 1989)⁴; or
- 2 (2) special extradition arrangements (arrangements relating to the operation of those procedures in particular cases made with a state with which there are no general extradition arrangements)⁵.

1 I.e. the Extradition Act 1989 Pt III (ss 7-17) (as amended): see PARA 1165 et seq post.

2 See ibid ss 1(1), 3 (as amended), 4 (as amended); and PARAS 1168-1179 post; ss 1(2), 5; and PARAS 1166, 1167 post; s 1(2A) (as added); and PARA 1166 post. For the meaning of 'designated Commonwealth country' see PARA 1120 post; and for the meaning of 'colony' see PARA 1106 note 6 post. As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 post. The most significant category of foreign state with which such arrangements have been made are those signatories to the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) who are specified as 'Convention States' in the European Convention on Extradition Order 1990, SI 1990/1507, art 2 (as substituted), Sch 2 Pt I (as amended): see PARA 1121 post. There are also relevant arrangements with Brazil: see PARAS 1108, 1156 post.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See the Extradition Act 1989 s 3(3)(a); and PARA 1169 post.

5 See ibid s 3(3)(b); and PARA 1169 post.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1105 Part III cases generally

NOTE 2--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed: see PARA 1121-1153.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(ii) Extradition under Part III of the Extradition Act 1989/1106. Commonwealth countries and colonies.

1106. Commonwealth countries and colonies.

Part III of the Extradition Act 1989¹ applies to the arrangements between the United Kingdom² and a designated³ Commonwealth⁴ country⁵, and to arrangements between the United Kingdom and a colony⁶, subject to such exceptions, adaptations or modifications as may be specified in the relevant Order in Council⁷.

1 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended): see PARA 1165 et seq post.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Ie designated under the Extradition Act 1989 s 5: see PARA 1167 post. See also PARA 1120 post.

4 The Commonwealth embraces all those territories of which the Queen is Head, but it is not defined by statute. For a list of Commonwealth territories see COMMONWEALTH vol 13 (2009) PARA 709. Any territory for the external relations of which a Commonwealth country is responsible may be treated, for the purposes of an Order in Council under the Extradition Act 1989 s 5(1), as part of that country or, if the government of that country so requests, as a separate country: s 5(5).

5 See ibid s 1(2); and PARA 1166 post. For the meaning of 'designated Commonwealth country' see PARA 1120 post.

6 See ibid s 1(2); and PARA 1166 post. The Extradition Act 1989 has effect in relation to all colonies: s 5(2). 'Colony' means any part of Her Majesty's dominions outside the British Islands except: (1) countries having fully responsible status within the Commonwealth; (2) territories for whose external relations a country other than the United Kingdom is responsible; and (3) associated states; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one colony: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(a) (amended by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 74, Sch 4). As to United Kingdom colonies see PARAS 1270-1274 post.

7 See the Extradition Act 1989 s 5(3); and PARA 1167 post. The Order in Council may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient: see s 5(4); and PARA 1167 post. No recommendation may be made to Her Majesty in Council to make an Order containing any such direction as is authorised by s 5(3) unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament: see s 5(7); and PARA 1167 post. Orders in Council (other than Orders to which s 5(7) applies) are subject to annulment in pursuance of a resolution of either House of Parliament: see s 5(6); and PARA 1167 post.

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1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(ii) Extradition under Part III of the Extradition Act 1989/1107. European Convention on Extradition 1957.

1107. European Convention on Extradition 1957.

Part III of the Extradition Act 1989¹ applies² to extradition as between the United Kingdom³, the Channel Islands and the Isle of Man and any foreign state which is party to the European Convention on Extradition 1957⁴ and which is specified as a Convention State⁵.

1 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended): see PARA 1165 et seq post.

2 Ie subject to the limitations, restrictions, exceptions and qualifications contained in the European Convention on Extradition Order 1990, SI 1990/1507 (as amended): see art 2(1)(a) (art 2 substituted by SI 1996/2875); and PARA 1121 post.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); and PARA 1121 et seq post. For this purpose, Cyprus and Malta are to be treated as foreign states: European Convention on Extradition Order 1990, SI 1990/1507, art 2(2) (art 2(2) substituted by SI 1997/1759).

5 See the European Convention on Extradition Order 1990, SI 1990/1507, art 2(1)(a) (as substituted: see note 2 supra); and PARA 1121 post. For the meaning of 'Convention State' see PARA 1121 note 5 post.

The Extradition Act 1989, so far as it relates to extradition procedures under Pt III (as amended) applies, subject to the reservations and declarations set out in the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, Sch 2, as between the Convention States listed in Sch 1 Pt I and the territories listed in Sch 1 Pt II (see PARA 1121 note 41 post): see the European Convention on Extradition Order 1990, SI 1990/1507, art 2(1)(b) (as so substituted); and PARA 1121 post.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1107 European Convention on Extradition 1957

TEXT AND NOTES--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed: see PARA 1121-1153.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(ii) Extradition under Part III of the Extradition Act 1989/1108. Bilateral treaties.

1108. Bilateral treaties.

A treaty has been entered into by the United Kingdom¹ with Brazil since the Extradition Act 1989 came into force² and the implementing Order in Council specifies that Part III of the Extradition Act 1989³ applies to extraditions to Brazil as from a date to be notified in the London, Edinburgh and Belfast Gazettes⁴. A treaty has also been signed with India⁵.

1 See the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (London, 18 July 1995; TS 58 (1997); Cm 3759); and PARA 1156 post. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 As to the coming into force of the Extradition Act 1989 see PARA 1103 note 1 ante.

3 *Idem* Pt III (ss 7-17) (as amended): see PARA 1165 et seq post.

4 See the Brazil (Extradition) Order 1997, SI 1997/1176, art 1; and PARA 1156 post.

5 See the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of India (London, 22 September 1992; TS 13 (1994); Cm 2488).

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1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(ii) Extradition under Part III of the Extradition Act 1989/1109. Hong Kong Special Administrative Region.

1109. Hong Kong Special Administrative Region.

Special provision is made for the Hong Kong Special Administrative Region¹.

- 1 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 post.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(iii) Extradition under Schedule 1 to the Extradition Act 1989/1110. Schedule 1 cases generally.

(iii) Extradition under Schedule 1 to the Extradition Act 1989

1110. Schedule 1 cases generally.

Where, at the commencement of the Extradition Act 1989¹, there was an Order in Council² in force providing that the Extradition Act 1870 should apply to an arrangement between the United Kingdom³ and a foreign state then Schedule 1 to the Extradition Act 1989⁴ now governs the procedure with respect to that arrangement but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the Order⁵. Cases which fall within such an arrangement are commonly referred to as 'Schedule 1 cases'⁶.

1 See PARA 1103 note 1 ante.

2 Ie under the Extradition Act 1870 s 2 (repealed).

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

5 See ibid s 1(3); and PARA 1194 post. For a list of states falling into this category see PARA 1158 post.

6 As to Schedule 1 cases see PARA 1194 et seq post.

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The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

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(iv) Miscellaneous Arrangements

1111. Special extradition arrangements.

Where special extradition arrangements¹ have been made in respect of a person, extradition procedures are available in the case of that person, as between the United Kingdom² and the foreign state³ with which the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements⁴. The Secretary of State⁵ may issue a certificate of special extradition arrangements, which is a certificate (1) that special extradition arrangements have been made in respect of a person as between the United Kingdom and a foreign state specified in the certificate⁶; and (2) that extradition procedures are available in the case of that person as between the United Kingdom and the foreign state to the extent specified in the certificate⁷. Such a certificate of special extradition arrangements is conclusive evidence of all matters stated in it⁸.

1 For the meaning of 'special extradition arrangements' see PARA 1169 text to note 6 post.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Note that special extradition arrangements can only be made with a foreign state as defined in the Extradition Act 1989 s 3(2) (as amended): see PARA 1102 note 1 ante.

4 See the Extradition Act 1989 s 15(1); and PARA 1171 post.

5 As to the Secretary of State see PARA 1116 post.

6 See the Extradition Act 1989 s 15(3)(a); and PARA 1171 post.

7 See *ibid* s 15(3)(b); and PARA 1171 post.

8 See *ibid* s 15(2); and PARA 1171 post.

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The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 *et seq.*

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1112. Other arrangements.

Provision is made for Part III of the Extradition Act 1989¹ to apply in respect of extradition for offences under Acts giving effect to certain international Conventions² with respect to states who are party to the relevant Convention and with which the United Kingdom³ has no general extradition arrangements and for which there is no existing Order in Council under the Extradition Act 1870⁴ in force in relation to that state⁵.

Specific arrangements exist to enable the United Kingdom to deliver to the International Tribunals for the former Yugoslavia and for Rwanda persons accused of or convicted of an international tribunal crime⁶.

1 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

2 As to the Conventions to which this applies see *ibid* s 22(2); and PARA 1162 post.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 Ie under the Extradition Act 1870 s 2 (repealed).

5 Extradition Act 1989 s 22(1). See further PARA 1162 post.

6 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716 (as amended); and the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296 (as amended), which were both issued pursuant to the United Nations Act 1946 s 1 (as amended). As to international tribunals see PARA 1163 post. As to the International Criminal Court see PARA 1164 post. For the meaning of 'international tribunal crime' see PARA 1163 note 7 post.

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1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1112 Other arrangements

NOTE 6--As to United Nations Act 1946 s 1 and orders made thereunder see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 808.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(iv) Miscellaneous Arrangements/1113. Persons serving sentences outside the country of conviction.

1113. Persons serving sentences outside the country of conviction.

Where (1) a request is made¹ for the arrest and return of a person in the United Kingdom who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country ('the country of conviction') to serve their sentences in another ('the country of imprisonment')²; and (2) certain particulars are furnished with the request³, the relevant legislation⁴ has effect (a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country⁵; and (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there⁶. The question whether the person to whom the request relates is to be returned must be determined in accordance with the relevant legislation⁷.

1 le where the a request is made: (1) by some person recognised as a diplomatic or consular representative of a foreign state in the case of which an Order in Council under the Extradition Act 1870 s 2 (repealed) applies or as between which and the United Kingdom extradition procedures under the Extradition Act 1989 Pt III (ss 7-17) (as amended) are available; or (2) by or on behalf of the government of a designated Commonwealth country or the governor of a colony; or (3) by or on behalf of the government of the Hong Kong Special Administrative Region: s 21(1)(a) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 12). For the meaning of 'foreign state' see PARA 1102 note 1 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. For the meaning of 'designated Commonwealth country' see PARA 1120 post. For the meaning of 'governor' see PARA 1201 note 7 post. For the meaning of 'colony' see PARA 1106 note 6 ante. As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 post.

2 Extradition Act 1989 s 21(1)(a) (as amended: see note 1 supra). As to the United Kingdom legislation giving effect to such arrangements see the Repatriation of Prisoners Act 1984; and PRISONS vol 36(2) (Reissue) PARA 555 et seq.

3 Extradition Act 1989 s 21(1)(b). The particulars to be furnished with the request are: (1) particulars of the person whose return is requested; (2) particulars of the offence of which he was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under the relevant legislation); (3) a certificate of the conviction and sentence; and (4) a certificate of the international arrangements for repatriation under which he was held: s 21(1)(b). As to the form of documents see s 28 (as amended); and PARA 1193 post. See also note 4 infra.

4 'The relevant legislation' means the provisions of the Extradition Act 1989 that are relevant (1) if the case falls within s 21(2)(a) (see the text to note 5 infra), to extradition to the country of conviction; and (2) if it falls within s 21(2)(b) (see the text to note 6 infra), to extradition to the country of imprisonment: s 21(4).

5 Ibid s 21(2)(a).

6 Ibid s 21(2)(b). A person may not be returned under s 21(2)(b) unless the offence was committed in the country of conviction, or the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction: s 21(3).

7 Ibid s 21(2).

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(v) Cases under the Backing of Warrants (Republic of Ireland) Act 1965/1114. Arrangements with the Republic of Ireland.

(v) Cases under the Backing of Warrants (Republic of Ireland) Act 1965

1114. Arrangements with the Republic of Ireland.

Arrangements between the United Kingdom¹ and the Republic of Ireland for the surrender of persons sought are governed by the Backing of Warrants (Republic of Ireland) Act 1965².

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See PARA 1284 et seq post.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(vi) The Extradition Process/1115. The role of the magistrate.

(vi) The Extradition Process

1115. The role of the magistrate.

The magistrate¹ is involved at two stages. First, he must issue a warrant for the arrest of the person whose return is sought². In some cases a provisional warrant is sought³. Secondly, the magistrate is involved in the committal of the individual to await the Secretary of State's⁴ decision as to his return and, if the Secretary of State decides that he must be returned, to await his return⁵. In Part III cases⁶ the individual may be committed either into custody or released on bail⁷. In Schedule 1 cases⁸ he must be committed to prison⁹.

At each stage, once the terms of the Extradition Act 1989 have been complied with¹⁰, the magistrate cannot look further than the evidence before him¹¹. The magistrate has no discretion in taking his decision to commit¹², but this lack of discretion is alleviated by the Secretary of State's discretion not to make an order or warrant for return and, to some extent, by the High Court's habeas corpus jurisdiction¹³. The magistrate may not consider whether the extradition proceedings are being pursued in abuse of the extradition process, but may prevent an abuse of the process of the magistrates' court¹⁴.

1 As to magistrates generally see MAGISTRATES. As to metropolitan stipendiary magistrates and the chief metropolitan stipendiary magistrate see the Justices of the Peace Act 1997 ss 16-20 (as amended). However, ss 11-20 (as amended) are prospectively repealed and replaced with ss 10A-10E by the Access to Justice Act 1999 s 78 as from a day to be appointed under s 108(1) (subject to transitional provisions and savings in s 105, Sch 14 Pt V). At the date at which this volume states the law no such day had been appointed. The Access to Justice Act 1999 introduces a new unified bench of professional judges to sit in magistrates' courts and creates a new judicial title for stipendiary magistrates. They will be given the new title 'District Judges (Magistrates' Courts)' and the chief stipendiary magistrate will be given the new title 'Senior District Judge (Chief Magistrate)'. Lay justices for the inner London area may not exercise the jurisdiction conferred on metropolitan stipendiary magistrates by the Extradition Act 1989: see the Justices of the Peace Act 1997 s 18(3), (4)(b) (prospectively repealed: see *supra*). In consequence of the prospective changes brought about by the Access to Justice Act 1999, as from a day to be appointed, references in the Extradition Act 1989 to the chief metropolitan stipendiary magistrate are to be replaced by references to the Senior District Judge (Chief Magistrate), and references to other metropolitan magistrates are to be replaced by references to District Judges (Magistrates' Court): see the Access to Justice Act 1999 s 78, Sch 11 paras 31-36. At the date at which this volume states the law no such day had been appointed.

2 As to the warrant for arrest see the Extradition Act 1989 s 8(1)(a), Sch 1 para 5(1)(a) (both prospectively amended: see note 1 *supra*); and PARAS 1187, 1211 *post*.

3 As to provisional warrants see *ibid* s 8(1)(b), Sch 1 para 5(1)(b); and PARAS 1188, 1212 *post*.

4 As to the Secretary of State see PARA 1116 *post*.

5 As to committal see the Extradition Act 1989 s 9(8), Sch 1 para 7(1) (both as amended); and PARAS 1190, 1213 *post*.

6 For the meaning of 'Part III cases' see PARA 1105 *ante*.

7 See the Extradition Act 1989 s 9(8); and PARA 1190 *post*.

8 For the meaning of 'Schedule 1 cases' see PARA 1110 *ante*.

9 See the Extradition Act 1989 Sch 1 para 7(1) (as amended); and PARA 1213 *post*.

10 This includes the general restrictions on return in Part III cases (see *ibid* s 6 (as amended); and PARA 1174 et seq post) and the restrictions on surrender in Schedule 1 cases (see Sch 1 para 1 (prospectively amended: see note 1 supra); and PARA 1203 et seq post).

11 *R v Governor of Pentonville Prison, ex p Lee* [1993] 3 All ER 504, [1993] 1 WLR 1294, DC.

12 *R v Secretary of State for the Home Department, ex p Hagan* (15 December 1993) Lexis, Enggen Library, Cases File, DC. 'Thus it will be seen that the roles of the magistrate and that of the Home Secretary are different. The magistrate has no discretion. He must commit a fugitive to prison if a prima facie case of the commission by the fugitive of a non-political and extraditable offence is established before him. The role of the Secretary of State, under [the Extradition Act 1989 Sch 1 para 8 (see PARA 1116 post)], is a discretionary one ...': *R v Secretary of State for the Home Department, ex p Hagan* supra at per Russell LJ. 'If the magistrate is satisfied that the authority to proceed has been issued in respect of the person arrested and that the offence to which the authority to proceed relates is an extradition crime he is required to commit. Nothing in the statute requires him to reach that state of mind on the basis of information as it was before the Secretary of State': *R v Governor of Brixton Prison, ex p Cuoghi* [1998] 1 WLR 1513 at 1522, DC, per Kennedy LJ.

13 *Re Osman* [1992] Crim LR 741, DC. As to the limits on the High Court's habeas corpus jurisdiction see PARA 1217 et seq post. As to the role of the High Court see also PARA 1117 post.

14 See *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64 at 81, sub nom *Sinclair v DPP* [1991] 2 All ER 366 at 377, HL, per Lord Ackner. 'By [the Extradition Act 1989 s 11] a radical alteration has been made by giving to the High Court, in part at least, the same kind of discretion, as to whether or not to discharge an applicant, as the Secretary of State has in deciding whether or not to order a fugitive criminal to be returned to a requesting state. It is the clearest possible recognition by the legislature that hitherto no such discretion existed in the courts and in particular in the magistrate's court': *R v Governor of Pentonville Prison, ex p Sinclair* supra at 80-81 and 377 per Lord Ackner. See also *Atkinson v Government of the United States of America* [1971] AC 197, [1969] 3 All ER 1317, HL. These cases were considered and upheld in *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(3) PRESENT STATUTORY STRUCTURE/(vi) The Extradition Process/1116. The role of the Secretary of State.

1116. The role of the Secretary of State.

Essentially the discretion of the Secretary of State¹ emerges at two stages: (1) in making the authority or order to proceed²; and (2) in making the order or warrant for return³. He also has the power to cancel a provisional warrant⁴. However, his discretion is not exhausted at the second stage and he remains under a continuing duty until the individual leaves the United Kingdom⁵, since until the individual's departure the Secretary of State has the power to withdraw the order or warrant for return⁶. In exceptional circumstances, at either stage the discretion will have to be exercised more than once⁷. The Secretary of State must also consider whether the offence is one for which return may not be ordered⁸.

In deciding whether to grant the authority⁹ or order¹⁰ to proceed, the function of the Secretary of State is not to decide whether the facts alleged by the requesting state are proved¹¹. In Part III cases he must contemplate whether it appears to him that eventually, and assuming that the magistrate makes his committal order, an order for the return of the individual could lawfully be made¹². Whilst there is no equivalent provision in Schedule 1 cases, in practice the Secretary of State contemplates the same point in deciding whether to grant an order to proceed.

In making the order or warrant for return, the Secretary of State has a wide discretion¹³, which has been described as the principal safeguard for the subject of extradition proceedings¹⁴.

In Part III cases, subject to the statutory restrictions on return, the Secretary of State has a general discretion whether or not to order return which he must exercise in the light of all the relevant circumstances¹⁵. The Secretary of State must not make an order for return if it appears to him in relation to the offence (or each of the offences) in respect of which the individual's return is sought that it would, having regard to all the circumstances, be unjust or oppressive¹⁶ to return him by reason of: (a) the trivial nature of the offence¹⁷; or (b) by reason of the passage of time since the individual is alleged to have committed the offence or to have become unlawfully at large¹⁸; or (c) because the accusation against the individual is not made in good faith in the interests of justice¹⁹. These statutory restrictions on the Secretary of State's discretion mirror the jurisdiction given to the High Court²⁰. However, although the Secretary of State can have regard to a decision of the High Court in a habeas corpus case, he must form his own judgment as to whether or not the statutory restrictions apply²¹.

Additionally, the Secretary of State may decide to make no order for return of a person accused or convicted of an offence not punishable with death in Great Britain²² if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made²³. Specific provision is made for this in Part III cases²⁴, and in practice, such a discretion is exercised in Schedule 1 cases.

Specific provision is made for the exercise of discretion in certain Part III cases. Thus the Secretary of State may decide to make no order²⁵ for the return of a person committed in consequence of an extradition request²⁶ if another extradition request or a requisition under Schedule 1 to the Extradition Act 1989 has been made in respect of him and it appears to the Secretary of State that preference should be given to that other request or requisition, having regard to all the circumstances of the case and in particular: (i) the relative seriousness of the offences in question²⁷; (ii) the date on which each such request was made²⁸; and (iii) the nationality or citizenship of the person concerned and his ordinary residence²⁹. That discretion is limited in cases in which the individual is serving a sentence of imprisonment or detention in the United Kingdom or has been charged with an offence in the United Kingdom. An order for

return must not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom (A) in the case of a person serving such a sentence, until the sentence has been served³⁰; (B) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served³¹.

The Secretary of State also has a discretion not to return in Schedule 1 cases. On the expiration of 15 days³² or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by the Secretary of State, the Secretary of State may by warrant order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal must be surrendered accordingly³³. In such cases there are not the same statutory restrictions as set out in heads (a) to (c) above³⁴ for Part III cases³⁵, but in exercising his discretion³⁶ the Secretary of State will apply the same criteria as in heads (a) to (c) above, and that practice has been approved by the High Court³⁷.

1 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. In this title, unless the context otherwise requires, the Secretary of State referred to is to be taken to be the Secretary of State for the Home Department. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. As to the Home Office see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466 et seq.

2 See the Extradition Act 1989 s 7(4) (see PARA 1186 post); and s 1(3), Sch 1 para 4(2) (prospectively amended) (see PARA 1210 post). In *Re Dokleja* (31 January 1994) Lexis, Enggen Library, Cases File, DC, the Secretary of State's decision to issue an authority to proceed was quashed on the grounds that the court could not find a 'scintilla of evidence' on which he could base that decision. Note the amendment to the Extradition Act 1989 s 7(2) and the insertion of s 7(2A) by the Criminal Justice and Public Order Act 1994 s 158(3)(b) after this decision, providing that information, rather than evidence, is adequate where the requesting state falls within an Order in Council made under the Extradition Act 1989 s 4(5).

3 See *ibid* s 12(1) (see PARA 1193 post); and Sch 1 para 8(2) (see PARA 1215 post).

4 See *ibid* s 8(4) (see PARA 1188 post); and Sch 1 para 5(2) (see PARA 1212 post). See also *R v Evans, ex p Pinochet Ugarte, Re Ugarte* (28 October 1998) Lexis, Enggen Library, Cases File, (1998) Times, 3 November, DC, where the applicant sought unsuccessfully to challenge on the grounds of perversity the failure of the Home Secretary to cancel the warrant under the Extradition Act 1989 s 8(4). As to perversity as a ground for judicial review see PARA 1242 post.

5 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

6 'The Secretary of State has a continuing duty to keep the matter under review until the person is removed from this country for return to the place which made the request. This is because he has the power, should circumstances change, to withdraw the [surrender] warrant before it has been implemented': *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961 at 974, [1997] 1 WLR 839 at 852, HL, per Lord Hope.

7 See eg *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97 at 153, [1999] 2 WLR 827 at 887, HL, per Lord Hope, following which the Secretary of State had to reconsider his decision to give authority to proceed. However, the decision of *R v DPP and the Secretary of State for Home Affairs, ex p Thom* [1996] Crim LR 116, DC (where it was held that once the Secretary of State had issued an order to proceed, he had no further powers until he came to exercise his discretion to make a surrender warrant) was not cited. The decision in *R v DPP and Secretary of State for Home Affairs, ex p Thom* supra concerned a Schedule 1 case, although Glidewell LJ stated that there was no effective difference in Part III cases. For the meaning of 'Part III cases' see PARA 1105 ante; and for the meaning of 'Schedule 1 cases' see PARA 1110 ante.

8 See the Extradition Act 1989 ss 6 (as amended), 12(2)(a) (see PARAS 1174 et seq, 1193 post); and Sch 1 para 1 (prospectively amended) (see PARA 1203 et seq post).

9 *le* under *ibid* s 7(4): see PARA 1186 post.

10 le under *ibid* Sch 1 para 4(2) (prospectively amended): see PARA 1210 post.

11 *Re Archondakis* (16 November 1994) Lexis, Enggen Library, Cases File, DC (habeas corpus application).

12 See *R v Secretary of State for the Home Office, ex p Yazici* (27 March 1996) Lexis, Enggen Library, Cases File; the Extradition Act 1989 s 7(4); and PARA 1186 post. As to the role of the magistrate see PARA 1115 ante.

13 'The Act does provide a safeguard. The Secretary of State always has power to refuse to surrender a man committed to prison by the magistrate. It appears to me that Parliament must have intended the Secretary of State to use that power whenever in his view it would be wrong, unjust or oppressive to surrender the man ... [T]he Secretary of State is answerable to Parliament, but not to the courts, for any decision he may make': *Atkinson v United States Government* [1971] AC 197 at 232-233, [1969] 3 All ER 1317 at 1322, HL, per Lord Reid. See also *Royal Government of Greece v Governor of Brixton Prison* [1971] AC 250 at 281, [1969] 3 All ER 1337 at 1341, HL, per Lord Morris of Borth-y-Gest ('The statutory provisions point with some precision to the functions of the courts and show that those functions are limited'); *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839 at 857, HL, per Lord Hope ('It cannot be stressed too strongly that the decision in this matter rests with the Secretary of State and not at all with the court ... His decision has had to be taken amidst an atmosphere of mistrust and suspicion which a court is in no position to penetrate ... It depends, in the end, upon the exercise of judgment of a kind which lies beyond the expertise of the court. That, no doubt, is why the decision whether or not to grant the warrant has been entrusted to the Secretary of State by Parliament'). See also the comments of Rose LJ in *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC.

Contrast the function of the magistrate, who has no discretion: see PARA 1115 ante. It is no part of the Secretary of State's function to review the magistrate's decision, although he should consider any fresh evidence put before him which was not before the magistrate: *R v Secretary of State for the Home Department, ex p Hagan* (15 December 1993) Lexis, Enggen Library, Cases File, DC.

14 *Re Schmidt* [1995] 1 AC 339 at 379, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65 at 77, HL, per Lord Jauncey.

15 Where a person is committed under the Extradition Act 1989 s 9 (as amended) (see PARA 1189 et seq post) and is not discharged by order of the High Court, the Secretary of State may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by the Extradition Act 1989, or the Secretary of State decides under s 12 (as amended) to make no such order in this case: see s 12(1); and PARA 1193 post.

16 'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return [the individual] would not be fair': *Kakis v Government of the Republic of Cyprus* [1978] 2 All ER 634 at 638, [1978] 1 WLR 779 at 782-783, HL, per Lord Diplock.

17 See the Extradition Act 1989 s 12(2)(a)(i); and PARA 1193 post. Challenges to the Secretary of State's decision on this ground are rare since the Secretary of State will not issue an authority or order to proceed under s 7(4) (see PARA 1186 post) where the request concerns a trivial offence.

18 See *ibid* s 12(2)(a)(ii); and PARA 1193 post. The Secretary of State's decision on this ground is often the subject of challenge, especially by way of judicial review on grounds of perversity: see eg *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC; *R v Secretary of State for the Home Department, ex p Launder* (1996) Times, 29 October, DC (revsd on appeal on different grounds [1997] 3 All ER 961, [1997] 1 WLR 839, HL); *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC. See also *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, HL; *Union of India v Narang* [1978] 2 All ER 634, [1978] AC 247, HL.

19 See the Extradition Act 1989 s 12(2)(a)(iii); and PARA 1193 post. For examples of challenges on this ground see *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC (bad faith of the requesting state; challenge to the Secretary of State's decision); *Re Calis* (19 November 1993) Lexis, Enggen Library, Cases File, DC (bad faith of the accuser; application for habeas corpus under the Extradition Act 1989 s 11(3)).

20 See the Extradition Act 1989 s 11(3); and PARA 1183 post. Those restrictions are without prejudice to his general discretion: *R v Secretary of State for the Home Department, ex p Sinclair* [1992] Imm AR 293 at 300, DC, per Watkins LJ. See also *R v Secretary of State for the Home Department, ex p Agkurt* (1998) Times, 5 March, DC. As to the role of the High Court see PARA 1117 post.

21 See the comments of May J indicating that the discretion to be exercised under the Extradition Act 1989 s 12(2) is a separate and additional discretion to that with which s 11 is concerned in *R v Secretary of State for*

the Home Office, ex p Vitale (8 December 1995, unreported). The Secretary of State should take account of the High Court's findings but is not bound by them: see *R v Secretary of State for the Home Department, ex p Rose* (9 March 1995, unreported), DC, per Balcombe LJ. See also *R v Secretary of State for the Home Department, ex p Launder* (1996) Times, 29 October, DC (this part of the decision was not subject to appeal to the House of Lords [1997] 3 All ER 961, [1997] 1 WLR 839, HL).

22 For the meaning of 'Great Britain' see PARA 1101 note 10 ante.

23 See the Extradition Act 1989 s 12(2)(b); and PARA 1193 post.

24 See note 23 supra.

25 Ie under the Extradition Act 1989 s 12 (as amended).

26 For the meaning of 'extradition request' see PARA 1184 post.

27 Extradition Act 1989 s 12(5)(a); and see PARA 1193 post. There is no equivalent provision to s 12(5) in Schedule 1 cases, although there may be a provision akin to this in the specific treaty between the United Kingdom and the requesting state.

28 Ibid s 12(5)(b); and see PARA 1193 post.

29 Ibid s 12(5)(c); and see PARA 1193 post.

30 Ibid s 12(3)(a); and see PARA 1193 post.

31 Ibid s 12(3)(b); and see PARA 1193 post.

32 Ie the 15 days referred to in ibid Sch 1 para 8(1): see PARA 1207 post.

33 Ibid Sch 1 para 8(2); and see PARA 1215 post.

34 Ie under ibid s 12(2)(a): see heads (a)-(c) in the text and notes 17-19 supra.

35 However, as there are general restrictions on return in Part III cases (see ibid s 6 (as amended); and PARA 1174 et seq post), there are restrictions on surrender in Schedule 1 cases (see Sch 1 para 1 (prospectively amended); and PARA 1203 et seq post). Similarly, s 12(3) is reflected in Sch 1 para 1(4). A fugitive criminal who has been accused of some offence within United Kingdom jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, must not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise, or unless an order is made for the charge in respect of the offence to lie on the file: Sch 1 para 1(4); and see PARA 1206 post.

36 Ie under ibid Sch 1 para 8(2): see the text and note 33 supra.

37 *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1116 The role of the Secretary of State

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1117. The role of the High Court.

The jurisdiction¹ of the High Court² may³ be invoked at the following stages:

- 3 (1) in a challenge to the decision of the magistrate whether to grant a provisional warrant⁴;
- 4 (2) in a challenge to the decision of the Secretary of State⁵ whether to cancel the provisional warrant⁶;
- 5 (3) in a challenge to the decision of the magistrate whether to grant a full order warrant⁷;
- 6 (4) in a challenge to the decision of the Secretary of State whether to issue the order or authority to proceed⁸;
- 7 (5) in a challenge to the decision of the magistrate whether to commit⁹;
- 8 (6) in Part III cases¹⁰, in a challenge by way of statutory habeas corpus¹¹;
- 9 (7) in a challenge to the decision of the Secretary of State whether to issue the order for return or surrender warrant¹²;
- 10 (8) in an application for discharge in the case of delay¹³.

1 '[T]he position now is that in extradition proceedings under the [Extradition Act 1989] the High Court has power to intervene only in the circumstances predicated by the Act and has no inherent common law supervisory power as contended for by the applicant': *Re Schmidt* [1995] 1 AC 339 at 378-379, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65 at 77, HL, per Lord Jauncey of Tullichettle.

2 All cases are heard in the Queen's Bench Division. An application for permission to apply for judicial review may be heard either by a single judge or, on renewal, by a Divisional Court: see PARA 1233 post. In some cases the Divisional Court will hear the original permission application where an application for habeas corpus is made at the same time. As to applications for habeas corpus see PARA 1217 et seq post. All substantive applications for judicial review are heard by the Divisional Court because they are cases in a criminal cause or matter (see PARA 1235 post), as are all appeals by way of case stated (see PARA 1253 post). Applications for habeas corpus may be granted or refused by a single judge or by a Divisional Court. The Administration of Justice Act 1960 s 14(1), which provided that orders for release on criminal applications for habeas corpus were to be refused only by the Divisional Court of the Queen's Bench Division, was repealed by the Access to Justice Act 1999 s 65(1) (a). An application for statutory discharge may be made to a single judge or to a Divisional Court: see eg *R v Secretary of State for the Home Office, ex p Vitale* (8 December 1995, unreported); and PARAS 1257-1258 post.

3 The jurisdiction of the High Court is invoked only at the instance of a party; the High Court need not be involved at all in the extradition procedure.

4 See PARAS 1188, 1212 post. As to the role of the magistrate see PARA 1115 ante.

5 As to the Secretary of State see PARA 1116 ante.

6 See PARAS 1188, 1212 post.

7 See PARAS 1187, 1211 post.

8 See PARAS 1186, 1210 post.

9 See PARA 1189 et seq, 1213 post.

10 For the meaning of 'Part III cases' see PARA 1105 ante.

11 ie under the Extradition Act 1989 s 11(3): see PARA 1183 post.

12 See PARAS 1193, 1216 post.

13 See PARAS 1257-1258 post.

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(4) DOCUMENTS AND EVIDENCE/1118. Authentication of foreign documents.

(4) DOCUMENTS AND EVIDENCE

1118. Authentication of foreign documents.

In extradition proceedings in relation to a person whose return has been requested by a foreign state¹ foreign documents may be authenticated by the oath of a witness, but must in any case be deemed duly authenticated: (1) if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued²; and (2) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of the foreign state³.

In extradition proceedings in relation to a person whose return has been requested by or on behalf of the government of the Hong Kong Special Administrative Region⁴ documents from that region may be authenticated by the oath of a witness, but must in any case be deemed duly authenticated: (a) if they purport to be signed by a judge, magistrate or officer of the Hong Kong Special Administrative Region⁵; and (b) if they purport to be certified by being sealed with an official or public seal of the Hong Kong Special Administrative Region, or by an officer of that region⁶.

1 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

2 Extradition Act 1989 s 26(1)(a). As to the admissibility of foreign evidence see PARA 1119 post.

3 Ibid s 26(1)(b). Judicial notice must be taken of such certification as is mentioned in head (2) in the text, and documents authenticated by such certification must be received in evidence without further proof: s 26(2).

4 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 post.

5 Extradition Act 1989 s 26(1A)(a) (s 26(1A) added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 13(a)).

6 Extradition Act 1989 s 26(1A)(b) (as added: see note 5 supra). Judicial notice must be taken of such certification as is mentioned in head (b) in the text, and documents authenticated by such certification must be received in evidence without further proof: s 26(2) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 13(b)).

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/1. INTRODUCTION/(4) DOCUMENTS AND EVIDENCE/1119. Evidence from Commonwealth countries and colonies.

1119. Evidence from Commonwealth countries and colonies.

In any proceedings under the Extradition Act 1989 in relation to a person whose return has been requested by a designated Commonwealth country¹ or a colony², including proceedings on an application for habeas corpus³ in respect of a person in custody under the Extradition Act 1989⁴:

- 11 (1) a document, duly authenticated, which purports to set out evidence given on oath in a designated Commonwealth country or a colony is admissible as evidence of the matters stated in it⁵;
- 12 (2) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any designated Commonwealth country or any colony is admissible in evidence⁶;
- 13 (3) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or any colony is admissible as evidence of the fact and date of the conviction⁷.

A document is deemed to be duly authenticated for these purposes⁸:

- 14 (a) in the case of a document purporting to set out evidence given as mentioned in head (1) above, if the document purports to be certified by a judge or magistrate or officer in or of the country or colony in question to be the original document containing or recording that evidence or a true copy of such a document⁹;
- 15 (b) in the case of a document which purports to have been received in evidence as mentioned in head (2) above or to be a copy of a document so received, if the document purports to be certified as mentioned in head (a) above to have been, or to be a true copy of a document which has been, so received¹⁰;
- 16 (c) in the case of a document which certifies that a person was convicted as mentioned in head (3) above, if the document purports to be certified as mentioned in head (a) above¹¹,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a minister of the designated Commonwealth country or of the governor¹² or a minister, secretary or other officer administering a department of the government of the colony, as the case may be¹³.

The admission in evidence of any document which is admissible in evidence apart from this provision is not prejudiced by anything in this provision¹⁴.

1 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

2 For the meaning of 'colony' see PARA 1106 note 6 ante.

3 As to applications for habeas corpus see PARA 1217 et seq post.

4 Ibid s 27(1).

5 Ibid s 27(1)(a). As to authentication of foreign documents see PARA 1118 ante.

- 6 Ibid s 27(1)(b).
- 7 Ibid s 27(1)(c).
- 8 Ibid s 27(2).
- 9 Ibid s 27(2)(a).
- 10 Ibid s 27(2)(b).
- 11 Ibid s 27(2)(c).
- 12 For the meaning of 'governor' see PARA 1201 note 7 ante.
- 13 Extradition Act 1989 s 27(2).
- 14 Ibid s 27(3).

UPDATE

1101-1119 Introduction

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(i) Commonwealth Countries/1120. Designated Commonwealth countries.

2.

(1) PART III ARRANGEMENTS

(i) Commonwealth Countries

1120. Designated Commonwealth countries.

Her Majesty may by Order in Council designate for the purposes of the Extradition Act 1989¹ any country whose citizens are Commonwealth citizens² and any country so designated is referred to as a 'designated Commonwealth country' in the Extradition Act 1989³. The following countries have been so designated: Antigua and Barbuda⁴, Australia⁵, The Bahamas⁶, Bangladesh⁷, Barbados⁸, Belize⁹, Botswana¹⁰, Brunei¹¹, Canada¹², Cook Islands¹³, Dominica¹⁴, Fiji¹⁵, The Gambia¹⁶, Ghana¹⁷, Grenada¹⁸, Guyana¹⁹, India²⁰, Jamaica²¹, Kenya²², Kiribati²³, Lesotho²⁴, Malawi²⁵, Malaysia²⁶, Maldives²⁷, Mauritius²⁸, Nauru²⁹, New Zealand³⁰, Nigeria³¹, Papua New Guinea³², Saint Christopher and Nevis³³, Saint Lucia³⁴, Saint Vincent and the Grenadines³⁵, Seychelles³⁶, Sierra Leone³⁷, Singapore³⁸, Solomon Islands³⁹, South Africa⁴⁰, Sri Lanka⁴¹, Swaziland⁴², Tanzania⁴³, Tonga⁴⁴, Trinidad and Tobago⁴⁵, Tuvalu⁴⁶, Uganda⁴⁷, Vanuatu⁴⁸, Western Samoa⁴⁹, Zambia⁵⁰ and Zimbabwe⁵¹.

Cyprus and Malta are treated as foreign states for extradition purposes⁵². The other countries whose citizens are Commonwealth citizens (Cameroon, Mozambique, Namibia and Pakistan⁵³) have not been designated for extradition purposes.

1 le for the purposes of the Extradition Act 1989 s 1(2): see PARA 1166 post.

2 le any country for the time being mentioned in the British Nationality Act 1981 s 37, Sch 3: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11. As to the Commonwealth see also PARA 1106 note 4 ante.

3 Extradition Act 1989 s 5(1). As to the procedure for designation see PARA 1167 post.

4 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, art 2, Sch 1.

5 Ibid Sch 1. The following Australian dependencies are treated as part of Australia for the purposes of the Extradition Act 1989: Norfolk Island, Australian Antarctic Territory, Cocos (Keeling) Islands, Christmas Island, Heard and McDonald Islands and Ashmore and Cartier Islands: see the Fugitive Offenders (Designated Commonwealth Countries) Order 1970, SI 1970/149, art 3; and the Interpretation Act 1978 s 17(2)(b). Papua and New Guinea is also listed in the Fugitive Offenders (Designated Commonwealth Countries) Order 1970, SI 1970/149, art 3, but Papua New Guinea is now an independent country which has been separately designated: see the text and note 32 infra.

6 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, Sch 1.

7 Ibid Sch 1.

8 Ibid Sch 1.

9 Ibid Sch 1.

10 Ibid Sch 1.

11 Ibid Sch 1.

12 Ibid Sch 1.

13 The Cook Islands are a territory for whose external relations New Zealand is responsible and, at the request of the New Zealand government, they were designated as a separate territory: see the Fugitive Offenders (Designated Commonwealth Countries) Order 1970, SI 1970/149, art 2; and the Interpretation Act 1978 s 17(2)(b).

14 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, Sch 1.

15 Ibid Sch 1. Fiji's membership of the Commonwealth lapsed on 15 October 1987. Fiji re-joined the Commonwealth on 1 October 1997. Between these two dates, Fiji was, however, still a designated Commonwealth country for the purposes of extradition procedures: see *R v Governor of Brixton Prison, ex p Kahan* [1989] QB 716, [1989] 2 All ER 368.

16 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, Sch 1.

17 Ibid Sch 1.

18 Ibid Sch 1.

19 Ibid Sch 1.

20 Ibid Sch 1.

21 Ibid Sch 1.

22 Ibid Sch 1.

23 Ibid Sch 1.

24 Ibid Sch 1.

25 Ibid Sch 1.

26 Ibid Sch 1.

27 Ibid Sch 1.

28 Ibid Sch 1.

29 Ibid Sch 1.

30 Ibid Sch 1. The following New Zealand dependencies are treated as part of New Zealand for the purposes of the Extradition Act 1989: Niue and the Tokelau Islands: see the Fugitive Offenders (Designated Commonwealth Countries) Order 1970, SI 1970/149, art 4; and the Interpretation Act 1978 s 17(2)(b).

31 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, Sch 1.

32 Ibid Sch 1.

33 Ibid Sch 1.

34 Ibid Sch 1.

35 Ibid Sch 1.

36 Ibid Sch 1.

37 Ibid Sch 1.

38 Ibid Sch 1.

39 Ibid Sch 1.

40 Ibid Sch 1 (entry added by SI 1996/279).

41 Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700, Sch 1.

42 Ibid Sch 1.

43 Ibid Sch 1.

44 Ibid Sch 1.

45 Ibid Sch 1.

46 Ibid Sch 1.

47 Ibid Sch 1.

48 Ibid Sch 1.

49 Ibid Sch 1.

50 Ibid Sch 1.

51 Ibid Sch 1.

52 European Convention on Extradition Order 1990, SI 1990/1507, art 2(2) (substituted by SI 1997/1759).

53 See note 2 *supra*.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1120 Designated Commonwealth countries

TEXT AND NOTES--SI 1990/1507 lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1121. Effect and extent of the European Convention on Extradition 1957.

(ii) The European Convention on Extradition 1957

A. INTRODUCTION

1121. Effect and extent of the European Convention on Extradition 1957.

The European Convention on Extradition Order 1990¹ came into force on 14 May 1991² and, on that day, the European Convention on Extradition 1957³ came into force for the United Kingdom. Part III of the Extradition Act 1989⁴ applies, subject to the limitations, restrictions, exceptions and qualifications contained in the European Convention on Extradition Order 1990, to extradition as between the United Kingdom, the Channel Islands and the Isle of Man and any Convention State⁵. The Convention States are: Albania⁶, Austria⁷, Belgium⁸, Bulgaria⁹, Croatia¹⁰, Cyprus¹¹, Czech Republic¹², Denmark¹³, Estonia¹⁴, Finland¹⁵, France¹⁶, Federal Republic of Germany¹⁷, Greece¹⁸, Hungary¹⁹, Iceland²⁰, Israel²¹, Italy²², Latvia²³, Liechtenstein²⁴, Lithuania²⁵, Luxembourg²⁶, Malta²⁷, Moldova²⁸, the Netherlands²⁹, Norway³⁰, Poland³¹, Portugal³², Romania³³, Slovakia³⁴, Slovenia³⁵, Spain³⁶, Sweden³⁷, Switzerland³⁸, Turkey³⁹ and Ukraine⁴⁰.

The European Convention on Extradition 1957 also applies as between certain Convention States and certain dependent territories of the United Kingdom⁴¹.

1 See the European Convention on Extradition Order 1990, SI 1990/1507 (as amended), which was made pursuant to the Extradition Act 1870 ss 2, 21 (repealed) and the Extradition Act 1989 ss 4(1), 37(3).

2 Ie the date notified in the London Gazette: see the European Convention on Extradition Order 1990, SI 1990/1507, art 1.

3 Ie the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762). The Convention was opened for signature by Members of the Council of Europe on 13 December 1957. The Articles of the Convention are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1: see PARA 1130 et seq post. It has been stated that the European Convention on Extradition Order 1990, SI 1990/1507 (as amended) had the effect of incorporating the European Convention on Extradition 1957 into United Kingdom domestic law: see *Re Ismail* [1998] 3 All ER 1007 at 1009, [1998] 3 WLR 495 at 497, HL, obiter per Lord Steyn. Such incorporation was assumed (without argument on the point) in a number of cases: see eg *Re Bartley* (1994) Times, 22 July, DC; *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1998] 1 WLR 1513; *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174, [1998] 4 All ER 635; *R v Governor of Brixton Prison, ex p Quentin* (27 October 1997) Lexis, Enggen Library, Cases File, DC. See, however, *Re Dokleja* (31 January 1994) Lexis, Enggen Library, Cases File, DC, in which the court, again without argument on the point, ruled that the Extradition Act 1989 took primacy over the European Convention on Extradition 1957.

4 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

5 European Convention on Extradition Order 1990, SI 1990/1507, art 2(1)(a) (art 2 substituted by SI 1996/2875). A 'Convention State' is any foreign state, party to the European Convention on Extradition 1957, which is listed in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (as amended): art 2(1)(a) (as so substituted). Cyprus and Malta, although Commonwealth countries, are for this purpose, to be treated as foreign states: art 2(2) (further substituted by SI 1997/1759). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

6 Ibid Sch 2 Pt I (entry added by SI 1999/2035).

7 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.

- 8 Ibid Sch 2 Pt I (entry added by SI 1998/259).
- 9 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (entry added by SI 1994/2796).
- 10 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (entry added by SI 1995/1962).
- 11 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 12 Ibid Sch 2 Pt I (entry added by SI 1995/1962).
- 13 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 14 Ibid Sch 2 Pt I (entry added by SI 1997/2596).
- 15 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 16 Ibid Sch 2 Pt I.
- 17 Ibid Sch 2 Pt I.
- 18 Ibid Sch 2 Pt I.
- 19 Ibid Sch 2 Pt I (entry added by SI 1993/2667).
- 20 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 21 Ibid Sch 2 Pt I.
- 22 Ibid Sch 2 Pt I.
- 23 Ibid Sch 2 Pt I (entry added by SI 1997/2956).
- 24 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 25 Ibid Sch 2 Pt I (entry added by SI 1995/2703).
- 26 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 27 Ibid Sch 2 Pt I (entry added by SI 1997/1759).
- 28 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (entry added by SI 1998/259).
- 29 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 30 Ibid Sch 2 Pt I.
- 31 Ibid Sch 2 Pt I (entry added by SI 1993/2667).
- 32 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 33 Ibid Sch 2 Pt I (entry added by SI 1998/259).
- 34 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (entry added by SI 1995/1962).
- 35 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (entry added by SI 1995/1962).
- 36 European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I.
- 37 Ibid Sch 2 Pt I.
- 38 Ibid Sch 2 Pt I.
- 39 Ibid Sch 2 Pt I.
- 40 Ibid Sch 2 Pt I (entry added by SI 1999/2035).
- 41 The Extradition Act 1989 Pt III (as amended) applies (subject to the limitations, restrictions, exceptions and qualifications contained in the European Convention on Extradition Order 1990, SI 1990/1507 (as amended)

and to the reservations and declarations set out in the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, Sch 2) to extradition as between the Convention States listed in Sch 1 Pt I (ie Finland, Hungary, Israel, Liechtenstein, Norway, Poland and Switzerland) and the territories listed in Sch 1 Pt II (ie Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and Dependencies, South Georgia and South Sandwich Islands, Turks and Caicos Islands and Virgin Islands): European Convention on Extradition Order 1990, SI 1990/1507, art 2(1)(b) (as substituted: see note 5 supra).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1122. Provision of evidence in respect of extradition requests.

1122. Provision of evidence in respect of extradition requests.

Where an extradition request is made by a Convention State¹ in respect of a person accused of an offence, it is not necessary for that state to furnish the court of committal with evidence sufficient to warrant the trial of that person if the extradition crime had taken place within the jurisdiction of the court² or for the court of committal to be satisfied that there is evidence sufficient to warrant the trial of that person³.

1 For the meaning of 'Convention State' see PARA 1121 ante.

2 European Convention on Extradition Order 1990, SI 1990/1507, art 3(a); and see note 3 infra.

3 Ibid art 3(b). See also the Extradition Act 1989 s 9(4), (8) (as amended); and PARA 1190 post. The European Convention on Extradition Order 1990, SI 1990/1507, art 3 only relates to accusation cases. Where the person whose extradition is sought has been convicted in the requesting state, admissible evidence of his conviction and of the fact that he is unlawfully at large, proved to the criminal standard, is required: *Re Kiriakos* (7 November 1996) Lexis, Enggen Library, Cases File, DC.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1123. Transitional and consequential provisions.

1123. Transitional and consequential provisions.

The European Convention on Extradition Order 1990¹ contains transitional provisions². Reservations and declarations relating to the European Convention on Extradition 1957³ have been made by the Convention States⁴ and by the United Kingdom⁵. The 1990 Order also revokes the Orders in Council⁶ giving effect to previous extradition arrangements between the United Kingdom, the Channel Islands and the Isle of Man and the Convention States⁷.

1 Ie the European Convention on Extradition Order 1990, SI 1990/1507 (as amended).

2 See *ibid* art 5 (as amended); and PARA 1158 post.

3 Ie the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante.

4 These reservations and declarations are set out in *ibid* Sch 3 (amended by SI 1993/2667; SI 1994/2796; SI 1995/2663; SI 1995/2703; SI 1997/1759; SI 1997/2596; SI 1998/259; SI 1999/2035). For the meaning of 'Convention State' see PARA 1121 ante.

5 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4 (amended by SI 1994/3203). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

6 Ie the Orders in Council under the Extradition Act 1870 s 2 (repealed): see PARA 1158 post.

7 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 5 (amended by SI 1992/2663; SI 1993/2667; SI 1995/1962; SI 1995/2703; SI 1997/2596; SI 1998/259; SI 1999/2035).

The European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, revokes the previous extradition arrangements between those Convention States and United Kingdom Dependent Territories listed in Sch 1. The previous extradition arrangements between Convention States and United Kingdom Dependent Territories not revoked by the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, remain in force: see PARA 1158 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1124. Territorial application of the European Convention on Extradition 1957.

1124. Territorial application of the European Convention on Extradition 1957.

The European Convention on Extradition 1957¹ applies to the metropolitan territories of the contracting parties². In respect of the United Kingdom of Great Britain and Northern Ireland, it applies also to the Channel Islands and to the Isle of Man³. By direct arrangement between two or more contracting parties, the application of the Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such parties⁴ for whose international relations any such party is responsible⁵.

The United Kingdom's reservation to this provision states that the Convention is to apply to the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man, but that the United Kingdom reserves the right to notify the Secretary-General of the Council of Europe of the application of the Convention to any territory for whose international relations the United Kingdom is responsible⁶.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 27 para 1.

3 Ibid Art 27 para 2. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. In respect of France, the Convention also applies to Algeria and to the overseas departments: Art 27 para 2. The Federal Republic of Germany may extend the application of the Convention to the Land of Berlin by notice addressed to the Secretary-General of the Council of Europe, who must notify the other parties of such declaration: Art 27 para 3. However, since the unification of Germany in 1990, the Land of Berlin and those Länder which used to form the German Democratic Republic are part of the Federal Republic of Germany, a signatory to the Convention: see Oppenheim's International Law (9th Edn) Vol 1 pp 135-141, 210 para 62; British Year Book of International Law 1997 pp 520-529.

4 I.e. other than the territories mentioned in the European Convention on Extradition 1957 Art 27 paras 1-3: see the text and notes 2-3 supra.

5 Ibid Art 27 para 4. By an exchange of notes between the United Kingdom and France dated 29 March 1993, it was agreed to extend the application of the Convention to the French Overseas Territories of French Polynesia, New Caledonia and Wallis and Futuna and to the 'collectivités territoriales' of Mayotte and St Pierre and Miquelon; by an exchange of notes between the United Kingdom and the Netherlands dated 24 November 1994, it was agreed to extend the application of the Convention to the Netherlands Antilles and Aruba, subject to the condition laid down therein as to the applicability of the declaration concerning Arts 6 and 21 made by the Netherlands on ratification of the Convention as modified by a letter dated 14 October 1987: European Convention on Extradition Order 1990 (Amendment) Order 1995, SI 1995/1624, preamble.

The European Convention on Extradition Order 1990, SI 1990/1507 (as amended) has effect (1) as between the United Kingdom and France, as if the terms embodied in Sch 1 included the Exchange of Notes recited in the European Convention on Extradition Order 1990 (Amendment) Order 1995, SI 1995/1624, Sch 1; and (2) as between the United Kingdom and the Netherlands, as if the terms embodied in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1 included the Exchange of Notes recited in the European Convention on Extradition Order 1990 (Amendment) Order 1995, SI 1995/1624, Sch 2: art 2.

6 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. See also the Extradition Act 1989 s 29 (see PARA 1103 ante); and PARA 1121 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1125. Relations between the European Convention on Extradition 1957 and bilateral agreements.

1125. Relations between the European Convention on Extradition 1957 and bilateral agreements.

The European Convention on Extradition 1957¹, in respect of those countries to which it applies, supersedes the provisions of any bilateral treaties, conventions or agreements governing extradition between any two contracting parties². The contracting parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of the Convention or to facilitate the application of the principles contained in it³. Where, as between two or more contracting parties, extradition takes place on the basis of a uniform law, the parties are free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system, notwithstanding the provisions of the Convention⁴. The same principle applies as between two or more contracting parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other party or parties⁵. The contracting parties which exclude or may in the future exclude the application of the Convention as between themselves⁶ must notify the Secretary-General of the Council of Europe accordingly⁷, and he must inform the other contracting parties of any such notification⁸.

The United Kingdom has made a reservation stating that the Convention supersedes the provisions of bilateral treaties between the United Kingdom and other contracting parties only to the extent that the Convention applies⁹ to the United Kingdom, the contracting parties, and any territories for whose international relations the United Kingdom or the contracting parties are responsible¹⁰.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 28 para 1. Certain bilateral treaties between the United Kingdom and Convention States are revoked with exceptions: see the European Convention on Extradition Order 1990, SI 1990/1507, art 5, Sch 5 (as amended); and PARA 1123 note 7 ante. See also PARA 1158 post. As to the revocation of bilateral treaties as they applied between the named Dependent Territories and Convention States see the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, Sch 3. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante; and for the meaning of 'Convention state' see PARA 1121 note 5 ante.

3 European Convention on Extradition 1957 Art 28 para 2.

4 Ibid Art 28 para 3. This is to provide for the arrangements between the Nordic countries (Norway, Sweden, Denmark, Finland and Iceland).

5 Ibid Art 28 para 3. The United Kingdom has given a notification that the Convention does not apply between the United Kingdom and any contracting party when laws are in force in the United Kingdom and in that contracting party providing for the execution in the territory of each of them of warrants issued in the territory of the other: see the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. The Republic of Ireland is the only such contracting party, and it does not fall within the definition of a Convention State for this reason. Provision is made for the return to the Republic of Ireland of persons who have committed offences against the laws of the Republic and who are in the United Kingdom, the Channel Islands or the Isle of Man by the Backing of Warrants (Republic of Ireland) Act 1965: see PARA 1284 et seq post.

6 I.e. in accordance with the European Convention on Extradition 1957 Art 28 para 3.

7 Ibid Art 28 para 3.

8 Ibid Art 28 para 3.

9 le by or under ibid Art 27: see PARA 1124 ante.

10 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1126. Signature, ratification and entry into force.

1126. Signature, ratification and entry into force.

The European Convention on Extradition 1957¹ is open to signature by the Members of the Council of Europe². It must be ratified and the instruments of ratification must be deposited with the Secretary-General of the Council of Europe³. It comes into force 90 days after the date of deposit of the third instrument of ratification⁴. As regards any signatory ratifying subsequently, the Convention comes into force 90 days after the date of the deposit of its instrument of ratification⁵. The Convention came into force for the United Kingdom on 14 May 1991⁶.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 29 para 1.

3 Ibid Art 29 para 1. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of the deposit of any instrument of ratification or accession: Art 32 para (a).

4 Ibid Art 29 para 2. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of the date of entry into force of the Convention: Art 32 para (b).

5 Ibid Art 29 para 3.

6 See PARA 1121 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1127. Accession.

1127. Accession.

The Committee of Ministers of the Council of Europe may invite any state which is not a Member of the Council to accede to the European Convention on Extradition 1957¹, provided that the resolution containing such invitation receives the unanimous agreement of the Members of the Council who have ratified the Convention². Accession is by deposit with the Secretary-General of the Council of Europe of an instrument of accession, which takes effect 90 days after the date of its deposit³.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 30 para 1.

3 Ibid Art 30 para 2. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of the deposit of any instrument of ratification or accession: Art 32 para (a).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1128. Denunciation.

1128. Denunciation.

Any contracting party may denounce the European Convention on Extradition 1957¹, in so far as it is concerned, by giving notice to the Secretary-General of the Council of Europe². Denunciation takes effect six months after the date when the Secretary-General of the Council of Europe receives such notification³.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 31. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of any notification of denunciation received in accordance with the provisions of Art 31 and by the date on which such denunciation will take effect: Art 32 para (f).

3 Ibid Art 31.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/A. INTRODUCTION/1129. Reservations.

1129. Reservations.

Any contracting party may, when signing the European Convention on Extradition 1957¹ or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention². Any contracting party which has made a reservation must withdraw it as soon as circumstances permit³, and such withdrawal is to be made by notification to the Secretary-General of the Council of Europe⁴. A contracting party which has made a reservation in respect of a provision of the Convention may not claim application of that provision by another party save in so far as it has itself accepted the provision⁵.

1 Ibid the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 26 para 1. See also PARA 1123 ante. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of any reservation made in accordance with Art 26 para 1: Art 32 para (d).

3 Ibid Art 26 para 2. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of the withdrawal of any reservation in accordance with Art 26 para 2: Art 32 para (e).

4 Ibid Art 26 para 2.

5 Ibid Art 26 para 3.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1130. The obligation to extradite.

B. EXTRADITION UNDER THE CONVENTION

1130. The obligation to extradite.

The contracting parties undertake to surrender to each other, subject to the provisions and conditions in the European Convention on Extradition 1957¹, all persons against whom the competent authorities of the requesting party are proceeding for an offence or who are wanted by those authorities for the carrying out of a sentence or detention order². The United Kingdom³ reserves the right to refuse extradition requested pursuant to or for the purpose of executing a conviction or sentence pronounced against the person concerned in his absence from the proceedings in respect of which the conviction or sentence was pronounced⁴.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 1. 'Detention order' means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence: Art 25.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. This reservation reflects the Extradition Act 1989 s 6(2) (as amended); see PARA 1179 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1131. Extraditable offences.

1131. Extraditable offences.

Under the European Convention on Extradition 1957¹, extradition must be granted in respect of offences punishable under the laws of both the requesting and requested parties by deprivation of liberty or under a detention order² for a maximum period of at least one year or by a more severe penalty³. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting party, the punishment awarded must have been for a period of at least four months⁴. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting party and the requested party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested party also has the right to grant extradition for the latter offences⁵. Any contracting party whose law does not allow extradition for certain of these offences⁶ may, in so far as it is concerned, exclude such offences from the application of the European Convention on Extradition 1957⁷. If extradition is subsequently excluded in respect of other offences by the law of a contracting party, that party must notify the Secretary-General of the Council of Europe and he must inform the other signatories⁸. Any party may apply reciprocity in respect of any offences excluded from the application of the Convention under these provisions⁹.

However, the United Kingdom¹⁰ has made a reservation to the effect that it may still decide to grant extradition, provided the offence carries a minimum sentence of at least 12 months, whether or not such a sentence has, in fact, been imposed¹¹. The United Kingdom has made a further reservation to the effect that it has the right to refuse extradition if it appears, in relation to the offence or each of the offences in respect of which a person's return is sought, that, by reason of its trivial nature or because the accusation is not made in good faith in the interests of justice, it would, in all the circumstances, be unjust or oppressive to return him¹².

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 For the meaning of 'detention order' see PARA 1130 note 2 ante.

3 European Convention on Extradition 1957 Art 2 para 1. This reflects the definition of an extradition crime in the Extradition Act 1989 s 2(1)(a) (as amended): see PARA 1172 post.

4 European Convention on Extradition 1957 Art 2 para 1.

5 Ibid Art 2 para 2.

6 I.e. the offences referred to in ibid Art 2 para 1: see the text and note 3 supra.

7 Ibid Art 2 para 3. Any contracting party which wishes to avail itself of this right must, at the time of the deposit of its instrument of ratification or accession, transmit to the Secretary-General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and must at the same time indicate the legal provisions which allow or exclude extradition; and the Secretary-General of the Council of Europe must forward these lists to the other signatories: Art 2 para 4. See also note 7 infra.

8 Ibid Art 2 para 5. Such notification does not take effect until three months from the date of its receipt by the Secretary-General of the Council of Europe: Art 2 para 5. Any party which avails itself of the right provided for in Art 2 para 4 or 5 may at any time apply the European Convention on Extradition 1957 to offences which have been excluded from it and must inform the Secretary-General of the Council of Europe of such changes, and the Secretary-General of the Council of Europe must inform the other signatories: Art 2 para 6.

9 Ibid Art 2 para 7.

10 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

11 European Convention on Extradition Order 1990, SI 1990/1507, Sch 4.

12 Ibid Sch 4. This reflects the provisions of the Extradition Act 1989 ss 11(3)(a), (c) (see PARA 1183 post), 12(2)(a)(i), (iii) (see PARA 1193 post).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1132. Political offences etc.

1132. Political offences etc.

Under the European Convention on Extradition 1957¹, extradition must not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence². The same rule applies if the requested party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons³.

The taking or attempted taking of the life of a head of state or a member of his family is not to be deemed a political offence for the purposes of the European Convention on Extradition 1957⁴. However, the United Kingdom⁵ reserves the right to apply this provision⁶ only in respect of states parties to the European Convention on the Suppression of Terrorism⁷.

The above provisions⁸ do not affect any obligations which the contracting parties may have undertaken or may undertake under any other international convention of a multilateral character⁹.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 3 para 1. As to political offences see PARA 1175 et seq post.

3 Ibid Art 3 para 2. There are similar, but not identical, provisions in the Extradition Act 1989 s 6(1)(a), (c), (d): see PARA 1174 post.

4 European Convention on Extradition 1957 Art 3 para 3. See also the Extradition Act 1989 s 6(8); and PARA 1177 post.

5 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

6 I.e. the European Convention on Extradition 1957 Art 3 para 3: see the text and note 4 supra.

7 European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. As to the European Convention on the Suppression of Terrorism see PARA 1161 post.

8 I.e. the European Convention on Extradition 1957 Art 3.

9 Ibid Art 3 para 4. As to such conventions see PARA 1162 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1133. Military offences.

1133. Military offences.

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of the European Convention on Extradition 1957¹.

¹ European Convention on Extradition 1957 Art 4. See also the Extradition Act 1989 s 6(1)(b); and PARA 1174 post. The Convention referred to is the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1134. Fiscal offences.

1134. Fiscal offences.

Under the European Convention on Extradition 1957¹, extradition must be granted for offences in connection with taxes, duties, customs and exchange only if the contracting parties to the Convention have so decided in respect of any such offences or category of offences².

However, this provision³ has been replaced by the Second Additional Protocol to the European Convention on Extradition 1957⁴ for those states which have ratified the Protocol and which have accepted the relevant Chapter of it⁵. In substitution it is provided that, for offences in connection with taxes, duties, customs and exchange, extradition must take place between the contracting parties to the Convention in accordance with the provisions of the Convention if the offence, under the law of the requested party, corresponds to an offence of the same nature⁶. Extradition may not be refused on the ground that the law of the requested party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting party⁷.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 5.

3 I.e. ibid Art 5: see the text and note 2 supra.

4 See the Second Additional Protocol to the European Convention on Extradition 1957 Ch II. The Second Additional Protocol to the European Convention on Extradition 1957 (TS 49 (1994); Cm 2668) was opened for signature by Members of the Council of Europe (which have signed the European Convention on Extradition 1957) on 17 March 1978. The terms of the Protocol are set out in the European Convention on Extradition (Fiscal Offences) Order 1993, SI 1993/2663, Sch 1.

5 See ibid preamble. The states which have ratified the Protocol and have accepted Ch II comprise: the United Kingdom (which, for these purposes, means Great Britain and Northern Ireland: European Convention on Extradition (Fiscal Offences) Order 1993, SI 1993/2663, art 1); Austria, Cyprus, Denmark, Finland, Germany, Hungary, Iceland, Italy, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and Turkey: see Sch 2. The reservations made by foreign states are set out in Sch 3. The reservation made by the United Kingdom (that it does not accept the Protocol Ch I, III, IV or V) is set out in the European Convention on Extradition (Fiscal Offences) Order 1993, SI 1993/2663, Sch 4.

6 European Convention on Extradition 1957 Art 5 para 1 (substituted by the Second Additional Protocol to the European Convention on Extradition 1957 Ch II).

7 European Convention on Extradition 1957 Art 5 para 2 (substituted by the Second Additional Protocol to the European Convention on Extradition 1957 Ch II).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

1134 Fiscal offences

NOTES 4, 5--SI 1993/2663, replaced by European Convention on Extradition (Fiscal Offences) Order 2001, SI 2001/1453, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1135. Extradition of nationals.

1135. Extradition of nationals.

Under the European Convention on Extradition 1957¹, a contracting party has the right to refuse extradition of its nationals². Each contracting party may make a declaration defining the term 'nationals' for the purposes of the European Convention on Extradition 1957³. The United Kingdom⁴ does not refuse to extradite its own nationals, but several contracting parties have an absolute or qualified bar to extradition of their own nationals⁵.

If the requested party does not extradite its own nationals, it must, at the request of the requesting party, submit the case to its competent authorities for proceedings to be taken, if considered appropriate⁶.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 6 para 1(a). Nationality is to be determined as at the time of the decision concerning extradition: Art 6 para 1(c). If, however, the person claimed is first recognised as a national of the requested party during the period between the time of the decision and the time contemplated for the surrender, the requested party may avail itself of the provision contained in Art 6 para 1(a): Art 6 para 1(c). The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of any declaration made pursuant to Art 6: Art 32(c).

3 Ibid Art 6 para 1(b).

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 3 (as amended); and PARA 1123 ante.

6 European Convention on Extradition 1957 Art 6 para 2. For this purpose, the files, information and exhibits relating to the offence are to be transmitted without charge by the means provided for in Art 12 para 1 (see PARA 1141 post): Art 6 para 2. The requesting party is to be informed of the result of its request: Art 6 para 2.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1136. Place of commission.

1136. Place of commission.

Under the European Convention on Extradition 1957¹, the requested party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory². When the offence has been committed outside the territory of the requesting party, extradition may only be refused if the law of the requested party does not allow prosecution for the same category of offence when committed outside the requested party's territory or does not allow extradition for the offence concerned³.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 7 para 1.

3 Ibid Art 7 para 2.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1137. Pending proceedings for the same offences.

1137. Pending proceedings for the same offences.

Under the European Convention on Extradition 1957¹, the requested party may refuse to extradite a person if the competent authorities of that party are proceeding against him in respect of the offence or offences for which extradition is requested².

The United Kingdom³ has made a reservation to the effect that it may refuse to extradite a person if the authorities in the United Kingdom, the Channel Islands or the Isle of Man have instituted or are about to institute criminal or other proceedings against that person, whether or not those proceedings are in respect of the offence or offences for which extradition is requested⁴.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 8. This Article has no equivalent in the Extradition Act 1989, but the Secretary of State would take such proceedings into account when deciding whether or not to issue an authority to proceed. As to the Secretary of State see PARA 1116 ante.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. See also the similar, but not identical, provisions in the Extradition Act 1989 s 12(3); and PARA 1193 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1138. Non bis in idem.

1138. Non bis in idem.

Under the European Convention on Extradition 1957¹, extradition must not be granted if final judgment has been passed by the competent authorities of the requested party on the person whose extradition is sought in respect of the offence or offences for which extradition is requested². However, the United Kingdom³ reserves the right to refuse to extradite a person accused of an offence, if it appears that that person would, if charged with that offence in the United Kingdom, be entitled to be discharged under any rule of law relating to previous acquittal or conviction⁴. Extradition may be refused if the competent authorities of the requested party have decided either not to institute or to terminate proceedings in respect of the same offence or offences⁵.

1 See the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 9.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. This reflects the provisions of the Extradition Act 1989 s 6(3): see PARA 1180 post.

5 European Convention on Extradition 1957 Art 9.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1139. Lapse of time.

1139. Lapse of time.

Under the European Convention on Extradition 1957¹, extradition must not be granted when the person claimed has, according to the law of either the requesting or the requested party, become immune by reason of lapse of time from prosecution or punishment². The United Kingdom reserves the right to refuse extradition if it appears that, by reason of the passage of time since it is alleged that the offence or offences were committed or since the person sought has become unlawfully at large, it would, having regard to all the circumstances, be unjust or oppressive to return him³.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 10. This restriction on extradition has no equivalent in the Extradition Act 1989.

3 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. This reservation reflects the restriction on return in the Extradition Act 1989 ss 11(3)(b) (see PARA 1183 post), 12(2)(a)(ii) (see PARA 1193 post). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1140. Capital punishment.

1140. Capital punishment.

Under the European Convention on Extradition 1957¹, if the offence for which extradition is granted is punishable by death under the law of the requesting party, and if in respect of such offence, the death penalty is not provided for by the law of the requested party or is not normally carried out, extradition may be refused unless the requesting party gives such assurance as the requested party considers sufficient that the death penalty will not be carried out².

¹ The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

² European Convention on Extradition 1957 Art 11. See also the Extradition Act 1989 s 12(2)(b); and PARA 1193 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1141. The request for extradition.

1141. The request for extradition.

Under the European Convention on Extradition 1957¹, the request must be in writing and must be communicated through the diplomatic channel². Other means of communication may be arranged by direct agreement between two or more parties to the European Convention on Extradition 1957³.

The request must be supported by:

- 17 (1) the original or an authenticated copy of the conviction and sentence or detention order⁴ immediately enforceable⁵ or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting party⁶;
- 18 (2) a statement of the offences for which extradition is requested, together with the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions set out as accurately as possible⁷; and
- 19 (3) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed together with any other information which will help to establish identity and nationality⁸.

The United Kingdom has made a reservation which states that in addition to the request and any supporting documentation, it requires a statement indicating whether or not a conviction in respect of which extradition is requested was obtained in the presence of the person whose return is sought⁹. The United Kingdom also requires that the statement of offences for which extradition is requested must contain a description of the conduct which it is alleged constitutes the offence or offences for which extradition is requested¹⁰. The United Kingdom has declared that foreign documents are to be deemed to be duly authenticated if they purport to be signed by a judge, magistrate or officer of the issuing state and if they purport to be certified by being sealed with the official seal of the Minister of Justice or another minister of the issuing state¹¹. The United Kingdom's other reservation to the Article of the European Convention on Extradition 1957 concerning the request for extradition has been withdrawn¹².

1 le the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 12 para 1.

3 Ibid Art 12 para 1. The Agreement between Member States of the European Community on the Simplification and Modernisation of Methods of Transmitting Extradition Requests (EC 24 (1996); Cm 3489) ('the Agreement') opened for signature in San Sebastian on 26 May 1989, and is set out in the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, Sch 1. The Agreement is not yet in force as between all Member States of the European Union. Certain states have ratified the Agreement and have declared, pursuant to the Agreement Art 5 para 3, that it will apply to them in their relations with other states that have made the same declaration. As to the reservations and declarations made by parties to the Agreement see the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, Sch 3. The European Convention on Extradition Order 1990, SI 1990/1507 (as amended) has effect as between the United Kingdom and those states listed in the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, Sch 2 (ie Germany, Luxembourg, the Netherlands and Spain), as if the terms in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1 (ie the Articles of the

European Convention on Extradition 1957) were amended, subject to the declarations set out in the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, Sch 3, by the terms of the Agreement: European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, art 2. Belgium, Italy and Sweden have also ratified the Agreement and made declarations pursuant to the Agreement Art 5 para 3. The United Kingdom has declared that, after the date of deposit of its instrument of ratification, the Agreement applies to it in its relations with other states, being states parties to the Agreement that have made a declaration to the like effect: European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, Sch 4. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

For the purpose of applying the extradition agreements in force between Member States, each contracting state must designate a central authority or, where the constitutional system so requires, the central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests: Agreement Art 1 para 1. Each Member State must designate its authority when ratifying, approving or accepting the Agreement and may alter the designation at any time thereafter: Agreement Art 1 para 2.

The extradition request and the necessary supporting documents may be sent by facsimile transmission: Agreement Art 2. See also the Extradition Act 1989 s 7(1), (7) (as amended) (see PARA 1184 post), which provides that extradition requests may be made by facsimile. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device must be fitted to the facsimile machine: Agreement Art 3 para 1. The contracting states must consult each other on the practical arrangements: see Agreement Art 3 para 2. In order to guarantee the authenticity of extradition documents, the authority designated by the requesting state must state in its request that it certifies that the documents transmitted in support of the request correspond to the originals: Agreement Art 4. The authority designated by the requested state is entitled to require the authority designated by the requesting state to produce the original documents or a true copy of them within a reasonable period through either diplomatic channels or any other mutually agreed channel: Agreement Art 4.

4 For the meaning of 'detention order' see PARA 1130 note 2 ante.

5 Where a person has been convicted in his absence in the requesting state and, on his return, would have the right to be re-tried as an accused person, the sentence passed on conviction in his absence is not immediately enforceable; in these circumstances, the authority to proceed would describe him as an accused person: see PARA 1179 post.

6 European Convention on Extradition 1957 Art 12 para 2(a).

7 Ibid Art 12 para 2(b).

8 Ibid Art 12 para 2(c). See also the Extradition Act 1989 s 7(2), (2A) (as added); and PARA 1185 post.

9 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4.

10 See ibid Sch 4.

11 See ibid Sch 4. See also the Extradition Act 1989 s 26 (as amended) (see PARA 1118 ante); and *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1998] 1 WLR 1513.

12 By this reservation, the United Kingdom required that an extradition request must be supported by the original of the conviction and sentence or detention order or of the warrant of arrest or other order having the same effect: see the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4 (as originally enacted). This reservation was withdrawn by the United Kingdom by letter dated 18 June 1991 which was registered at the Secretariat General of the Council of Europe on 21 June 1991, pursuant to the European Convention on Extradition 1957 Art 26 para 2 (see PARA 1129 ante): see the European Convention on Extradition (Amendment) Order 1994, SI 1994/3203. See also the Extradition Act 1989 s 7(2) (as amended) (see PARA 1185 post), which provides that a duly authenticated copy of a warrant of arrest or of a certificate of conviction and sentence may be furnished with an extradition request.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1142. Supplementary information.

1142. Supplementary information.

Under the European Convention on Extradition 1957¹, if the information communicated by the requesting party is found to be insufficient to allow the requested party to make a decision, the requested party must request the necessary supplementary information and may fix a time limit for its receipt².

¹ The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

² European Convention on Extradition 1957 Art 13.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1143. Rule of specialty.

1143. Rule of specialty.

Under the European Convention on Extradition 1957¹, a person who has been extradited must not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order² for any offence committed prior to his surrender other than that for which he was extradited, nor may he be, for any other reason, restricted in his personal freedom³, except (1) when the party which surrendered him consents⁴; or (2) when that person, having had an opportunity to leave the territory of the party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it⁵. The United Kingdom has entered a reservation to head (1) above by which it reserves the right in any case to refuse to consent to a person who has been extradited being proceeded against, sentenced or detained with a view to carrying out the sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited or to his being for any other reason restricted in his personal freedom⁶.

The requesting party may take any measures necessary to remove the person from its territory⁷ or any measures necessary under its law, including proceedings by default, to prevent the legal effects of lapse of time⁸. When the description of the offence charged is altered in the course of proceedings, the extradited person may only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition⁹.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 For the meaning of 'detention order' see PARA 1130 note 2 ante.

3 European Convention on Extradition 1957 Art 14 para 1. This is intended to deal solely with the rule of specialty that a person extradited must not be proceeded against by the requesting state for any other offence other than that for which he was extradited, and the restriction in his personal freedom for any other reason means a reason connected with an offence for which the requesting state might proceed against him; Art 14 is thus not concerned with re-extradition to a third state: *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174, [1998] 4 All ER 635. See also *R v Secretary of State for the Home Department, ex p Akbar* (31 July 1996) Lexis, Enggen Library, Cases File, DC.

It should be noted that, whilst the term 'specialty' appears in the United Kingdom legislation, the term in common use is 'specialty'.

4 European Convention on Extradition 1957 Art 14 para 1(a). A request for consent is to be submitted accompanied by the documents mentioned in Art 12 (see PARA 1141 ante) and a legal record of any statement made by the extradited person in respect of the offence concerned: Art 14 para 1(a). Consent must be given when the offence for which it is requested is itself subject to extradition in accordance with the European Convention on Extradition 1957: Art 14 para 1(a).

5 Ibid Art 14 para 1(b). See also the Extradition Act 1989 ss 6(4)-(7), 18, 19 (see PARAS 1181, 1277-1278 post) which contain specialty provisions which are differently worded from, but do not conflict with, the provisions of the European Convention on Extradition 1957 Art 14.

6 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

7 These words are wide enough to include removal by way of re-extradition to a third state, as well as deportation: *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174, [1998] 4 All ER 635.

8 European Convention on Extradition 1957 Art 14 para 2. The provision relating to lapse of time is included to cater for those states whose law provides that criminal proceedings must be instituted within set periods.

9 Ibid Art 14 para 3.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

1143 Rule of specialty

NOTE 5--See *R (on the application of Hilali) v City of Westminster Magistrates' Court* [2008] EWHC 2892 (Admin), [2009] 1 All ER 834, DC (no general statutory provision or implied power which required High Court to make inquiries of the requesting state about the conduct of the criminal process to which an extradited person was subject).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1144. Re-extradition to a third state.

1144. Re-extradition to a third state.

Under the European Convention on Extradition 1957¹, except as otherwise provided², the requesting party must not, without the consent³ of the requested party, surrender to another party to the European Convention on Extradition 1957 or to a third state a person surrendered to the requesting party and sought by the third party or state in respect of offences committed before his surrender⁴. The requested party may request the production of supporting documents⁵.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 As provided in the European Convention on Extradition 1957 Art 14 para 1(b): see PARA 1143 ante.

3 The European Convention on Extradition 1957 Art 15 imposes no restriction on when the consent of the requested party has to be obtained, except that it has to be before the surrender of the person to the third state: see *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174, [1998] 4 All ER 635. See also *R v Secretary of State for the Home Department, ex p Akbar* (19 March 1996) Lexis, Enggen Library, Cases File, DC; *R v Secretary of State for the Home Department, ex p Akbar* (31 July 1996) Lexis, Enggen Library, Cases File, DC.

4 European Convention on Extradition 1957 Art 15. There is no similar provision in the Extradition Act 1989.

5 European Convention on Extradition 1957 Art 15. The supporting documents referred to in the text are those mentioned in Art 12 para 2: see PARA 1141 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1145. Provisional arrest.

1145. Provisional arrest.

Under the European Convention on Extradition 1957¹, the competent authorities of the requesting party may, in urgent cases, request the provisional arrest of the person sought². The request for provisional arrest must state that one of the supporting documents³ exists and that it is intended to send an extradition request⁴. It must also state for what offence extradition will be requested, when and where such offence was committed and, as far as possible, give a description of the person sought⁵. A request for provisional arrest must be sent to the competent authorities of the requested party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested party⁶. The requesting authority is to be informed without delay of the result of its request⁷.

Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested party has not received the extradition request and the supporting documents⁸. Provisional arrest must not, in any event, exceed 40 days from the date of arrest⁹, and the possibility of provisional release at any time is not excluded, but the requested party must take any necessary measures to prevent the escape of the person sought¹⁰. Release does not prejudice re-arrest and extradition if an extradition request is received subsequently¹¹.

1 Ile the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 16 para 1. The competent authorities of the requested party decide the matter in accordance with its law: Art 16 para 1.

3 Ile one of the documents mentioned in *ibid* Art 12 para 2(a): see PARA 1141 ante.

4 Ibid Art 16 para 2.

5 Ibid Art 16 para 2. See also the less onerous provisions for issue of a provisional warrant under the Extradition Act 1989 s 8(1)(b), (3), (3A) (as added) (see PARA 1188 post).

6 European Convention on Extradition 1957 Art 16 para 3.

7 Ibid Art 16 para 3.

8 Ibid Art 16 para 4. The supporting documents referred to in the text are the documents mentioned in Art 12: see PARA 1141 ante.

9 Ibid Art 16 para 4. 'Provisional arrest under the Convention is arrest and detention pending the sending by the foreign state of a request for extradition. It then ceases. Arrest and detention under a provisional warrant ceases when an authority to proceed is issued unless, of course, the magistrate has previously ordered the detainee's earlier release. What art 16.4 guarantees is that no one shall be detained for more than 40 days before an extradition request is made. Once such a request is received, the detainee ceases to enjoy any protection under that article. His detention continues to be lawful under the provisional warrant and its length is controlled by [the Extradition Act 1989 s 9]. The detainee's only protection then is under [s 9(5) and (6)], the latter of which requires the art 16 limit to be reflected in the overall length of detention permitted': *R v Governor of Brixton Prison, ex p Quentin* (27 October 1997) Lexis, Enggen Library, Cases File, DC, per Simon Brown LJ.

Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court must give notice to the Secretary of State) after which he will be discharged from custody unless such an authority has been received:

see the Extradition Act 1989 s 9(5); and PARA 1189 post. In exercising the power conferred by s 9(5) in a case where the extradition request is made under general extradition arrangements (eg under the European Convention on Extradition 1957) the court must have regard to any period specified for the purpose in the Order in Council relating to the arrangements: see the Extradition Act 1989 s 9(6); and PARA 1189 post. As to the Secretary of State see PARA 1116 ante.

10 European Convention on Extradition 1957 Art 16 para 4.

11 Ibid Art 16 para 5.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1146. Conflicting requests.

1146. Conflicting requests.

Under the European Convention on Extradition 1957¹, if extradition is requested concurrently by more than one state, either for the same offence or for different offences, the requested party must make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another state².

¹ The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

² European Convention on Extradition 1957 Art 17. See also the Extradition Act 1989 s 12(5); and PARA 1193 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1147. Surrender of the person to be extradited.

1147. Surrender of the person to be extradited.

Under the European Convention on Extradition 1957¹, the requested party must inform the requesting party through the diplomatic channel or other means of communication arranged by direct agreement between the parties² of its decision with regard to the extradition³. Reasons must be given for any complete or partial rejection⁴. If the request is agreed to, the requesting party must be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender⁵. If the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and must, in any case, be released after the expiry of 30 days⁶. However, if circumstances beyond its control prevent a party from surrendering or taking over the person to be extradited, it must notify the other party and the two parties must agree a new date for surrender⁷. The requested party may refuse to extradite him for the same offence⁸.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 I.e. by the means mentioned in the European Convention on Extradition 1957 Art 12: see PARA 1141 ante.

3 Ibid Art 18 para 1.

4 Ibid Art 18 para 2.

5 Ibid Art 18 para 3.

6 Ibid Art 18 para 4.

7 Ibid Art 18 para 5. The two parties must agree a new date for surrender and the provisions of Art 18 para 4 apply: Art 18 para 5. Article 18 is not in conflict with the Extradition Act 1989 s 16, which provides for discharge of the person sought at the end of various legal processes unless sufficient cause is shown why he should not be discharged: see PARA 1257 post.

8 European Convention on Extradition 1957 Art 18 para 4.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1148. Postponed or conditional surrender.

1148. Postponed or conditional surrender.

Under the European Convention on Extradition 1957¹, the requested party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that party or, if he has already been convicted, in order that he may serve his sentence in the territory of that party for an offence other than that for which extradition is requested². The requested party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting party in accordance with conditions to be determined by mutual agreement between the parties³.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 19 para 1. See also the Extradition Act 1989 s 12(3); and PARA 1193 post.

3 European Convention on Extradition 1957 Art 19 para 2. The Extradition Act 1989 does not provide for this possibility.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1149. Handing over of property.

1149. Handing over of property.

Under the European Convention on Extradition 1957¹, the requested party must, in so far as its law permits and at the request of the requesting party, seize and hand over property which may be required as evidence or which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently². Such property must be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed³. When such property is liable to seizure or confiscation in the territory of the requested party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned⁴. Any rights which the requested party or third parties may have acquired in the property are preserved and where these rights exist, the property must be returned without charge to the requested party as soon as possible after the trial⁵.

1. The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2. European Convention on Extradition 1957 Art 20 para 1. The Extradition Act 1989 does not cover the extent to which property may be seized in the United Kingdom in connection with an extradition request.

3. European Convention on Extradition 1957 Art 20 para 2.

4. Ibid Art 20 para 3.

5. Ibid Art 20 para 4.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1150. Transit.

1150. Transit.

Transit through the territory of one of the contracting parties to the European Convention on Extradition 1957¹ is to be granted on submission of a request by the communication through the diplomatic channel or other means of communication arranged by direct agreement between the parties², provided that the offence concerned is not considered by the party requested to grant transit as an offence of a political or purely military character³. Transit of a national⁴ of a country requested to grant transit may be refused⁵. It is necessary to produce documents in support⁶. A party may at the time of signature or of the deposit of its instrument of ratification of, or accession to, the Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied⁷. The transit of the extradited person must not be carried out through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion⁸.

However, the United Kingdom does not accept the application of this Article⁹.

1 Ile the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 Ile by the means mentioned in the European Convention on Extradition 1957 Art 12 para 1: see PARA 1141 ante.

3 Ibid Art 21 para 1. As to offences of political character see Art 3; and PARAS 1132 ante, 1175 post. As to offences of military character see Art 4; and PARA 1133 ante.

4 See ibid Art 6; and PARA 1135 ante.

5 Ibid Art 21 para 2.

6 Ibid Art 21 para 3. The documents referred to in the text are those mentioned in Art 12 para 2: see PARA 1141 ante. As to the production of documents when air transport is used see Art 21 para 4.

7 Ibid Art 21 para 5. The Secretary-General of the Council of Europe must notify the Members of the Council and the government of any state which has acceded to the Convention of any declaration made in accordance with the provisions of Art 21 para 5: Art 32(c).

8 Ibid Art 21 para 6.

9 See the reservation to ibid Art 21 in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1151. Extradition and provisional arrest procedure.

1151. Extradition and provisional arrest procedure.

The procedure with regard to extradition and provisional arrest is to be governed solely by the law of the requested party, except where the European Convention on Extradition 1957¹ otherwise provides².

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 22.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1152. Language to be used in documentation.

1152. Language to be used in documentation.

Under the European Convention on Extradition 1957¹, the documents to be produced are to be in the language of the requesting or requested party². The requested party may require a translation into one of the official languages of the Council of Europe to be chosen by it³. The United Kingdom⁴ has made a reservation that the documents to be produced must be in English or accompanied by a translation into English⁵.

1 The European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 23. The Extradition Act 1989 does not provide for the language of documents.

3 European Convention on Extradition 1957 Art 23. The official languages of the Council of Europe are English and French: Statute of the Council of Europe (London, 5 May 1949; TS 51 (Cmnd 7778), Art 12.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(ii) The European Convention on Extradition 1957/B. EXTRADITION UNDER THE CONVENTION/1153. Expenses.

1153. Expenses.

Under the European Convention on Extradition 1957¹, expenses incurred in the territory of the requested party by reason of the extradition must be borne by that party². Expenses incurred by reason of transit through the territory of party requested to grant transit must be borne by the requesting party³. In the event of extradition from a non-metropolitan territory of the requested party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting party must be borne by the latter and the same rule applies to expenses occasioned by travel between the non-metropolitan territory of the requested party and its metropolitan territory⁴.

1 I.e. the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

2 European Convention on Extradition 1957 Art 24 para 1.

3 Ibid Art 24 para 2. As to transit see PARA 1150 ante.

4 Ibid Art 24 para 3. The United Kingdom, France and the Netherlands have non-metropolitan territories to which the Convention applies: see PARAS 1121 note 21, 1124 notes 3-5 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1121-1153 The European Convention on Extradition 1957

European Convention on Extradition Order 1990, SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(iii) European Union Conventions on Extradition/1154. European Union Conventions on Extradition.

(iii) European Union Conventions on Extradition

1154. European Union Conventions on Extradition.

The United Kingdom¹ has signed two European Union conventions on extradition, one in 1995² and one in 1996³. Both conventions are intended to simplify extradition within the European Union, and are supplementary to the European Convention on Extradition 1957⁴.

The 1995 convention sets out streamlined procedures for cases where the arrested person and the requested state consent to extradition⁵. The arrested person is to be notified of the possibility of consenting to surrender under the simplified procedure and he may then consent to his return⁶ and also renounce specialty protection⁷. Certain information is to be provided to the arrested person and the requested state for the purpose of giving consent⁸. No request for extradition is required; only a request for provisional arrest⁹. The convention makes provision as to the notification of the extradition decision¹⁰ and the deadline for surrender¹¹. There is also provision as to transit¹².

The 1996 convention allows for a lower sentence threshold for extradition crimes¹³. It contains provision to assist extradition for, inter alia, terrorism and drug trafficking¹⁴, and fiscal offences¹⁵. The convention provides that no offence may be regarded as a political offence¹⁶. It also sets out grounds on which extradition may not be refused¹⁷, and provides that extradition may not be granted in respect of an offence covered by an amnesty¹⁸. The convention relaxes specialty¹⁹ and authentication²⁰ requirements in certain circumstances. There is also provision as to transit²¹.

Neither convention has been ratified by the United Kingdom²².

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See the Convention drawn up on the basis of Article K3 of the Treaty on European Union, on Simplified Extradition Procedure between the Member States of the European Union (Brussels, 10 March 1995; EC 5 (1995); Cm 2958). As to the entry into force of the convention see Art 16; and as to accession see Art 17. As to the determination of competent authorities for the purposes of the convention see Art 15.

3 See the Convention drawn up on the basis of Article K3 of the Treaty on European Union relating to Extradition between the Member States of the European Union (Brussels, 27 September 1996; EC 3 (1997); Cm 3533). As to the entry into force of the convention see Art 18; and see also Art 14. As to accession see Art 19. No reservations may be entered in respect of this convention other than those for which it makes express provision: Art 17. The Secretary-General of the Council of the European Union acts as depositary of the convention: see Art 20.

4 See the European Convention on Simplified Extradition Procedure (1995) Art 1; and the European Convention relating to Extradition (1996) Art 1. As to the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

5 See the European Convention on Simplified Extradition Procedure (1995) Art 2.

6 See *ibid* Arts 5-8, 12.

7 See *ibid* Art 9. See also Art 13. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

8 See *ibid* Arts 4, 6.

- 9 See *ibid* Art 3.
- 10 See *ibid* Art10.
- 11 See *ibid* Art 11.
- 12 See *ibid* Art 14.
- 13 See the European Convention relating to Extradition (1996) Art 2.
- 14 See *ibid* Art 3.
- 15 See *ibid* Art 6.
- 16 See *ibid* Art 5.
- 17 See *ibid* Arts 4, 7, 8.
- 18 See *ibid* Art 9.
- 19 See *ibid* Art 10. See also Arts 11, 12.
- 20 See *ibid* Art 15. As to the designation of central authorities responsible for transmitting and receiving extradition requests and other documents see Art 13. Such requests and documents may be sent by facsimile transmission: see Art 13.
- 21 See *ibid* Art 16.
- 22 Before the United Kingdom can ratify either convention, amendments will have to be made to certain provisions of the Extradition Act 1989, bearing in mind the provisions of the conventions and depending on any reservations which the United Kingdom may make in respect of those provisions.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1154 European Union Conventions on Extradition

TEXT AND NOTES--The European Union Extradition Regulations 2002, SI 2002/419 (amended by SI 2002/1662) implements the 1995 and 1996 Conventions.

NOTE 4--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(iv) Other Part III Arrangements/1155. India.

(iv) Other Part III Arrangements

1155. India.

The United Kingdom¹ and India signed an extradition treaty in 1992². India is also a designated Commonwealth country for the purposes of the Extradition Act 1989³.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India (London, 22 September 1992; TS 13 (1994); Cm 2488).

3 See PARA 1120 text and note 20 ante. For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(iv) Other Part III Arrangements/1156. Brazil.

1156. Brazil.

The United Kingdom¹ and Brazil signed an extradition treaty in 1995². An Order in Council has been made under the Extradition Act 1989 directing that Part III of the Extradition Act 1989³ is to apply in the case of the Federative Republic of Brazil, in accordance with the treaty⁴.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (London, 18 July 1995; TS 58 (1997); Cm 3759). See also PARA 1108 ante. Provision is made for: the duty to extradite (see Art 1); extradition offences (see Art 2); grounds for refusal of extradition (see Art 3); capital punishment (see Art 4); extradition procedures (see Art 5); provisional arrest (see Art 6); competing requests (see Art 7); admission of evidence (see Art 8); due process (see Art 9); decision and surrender (see Art 10); surrender of property (see Art 11); rule of specialty (see Art 12); documents (see Art 13); expenses (see Art 14); mutual legal assistance in extradition (see Art 15); territorial application (see Art 16); dependent territories (see Art 17); and ratification, commencement and termination (see Art 18). The Articles of the treaty are set out in the Brazil (Extradition) Order 1997, SI 1997/1176, Schedule. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

3 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

4 Brazil (Extradition) Order 1997, SI 1997/1176, arts 1, 2. The operation of the order is limited to the United Kingdom: art 3.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1156 Brazil

NOTES--SI 1997/1176 lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(1) PART III ARRANGEMENTS/(iv) Other Part III Arrangements/1157. Hong Kong Special Administrative Region.

1157. Hong Kong Special Administrative Region.

The Extradition Act 1989 has been amended by Order in Council¹, made under the Hong Kong Act 1985², to provide for extradition between the United Kingdom³ and the Hong Kong Special Administrative Region⁴ after the transfer of sovereignty over Hong Kong to the People's Republic of China on 1 July 1997. An extradition treaty was made between the United Kingdom and the Hong Kong Special Administrative Region in 1997⁵.

1 See the Hong Kong (Extradition) Order 1997, SI 1997/1178. The amendments to the Extradition Act 1989 are set out in the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule. As to transitional provisions see arts 3-5. See also *Re Launder's Application* (14 December 1994) Lexis, Enggen Library, Cases File, DC; *R v Secretary of State for the Home Department, ex p Launder* (1996) Times, 29 October, DC (revsd in part [1997] 3 All ER 961, [1997] 1 WLR 839, HL); *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994, [1998] 3 WLR 221, DC; *R v Secretary of State for the Home Department, ex p Miller* (4 May 1999) Lexis, Enggen Library, Cases File, DC.

2 See the Hong Kong Act 1985 Schedule para 3(2).

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 See PARA 1166 note 8 post.

5 See the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Surrender of Fugitive Offenders (Hong Kong, 5 November 1997; TS 30 (1998); Cm 4034), which entered into force on 19 March 1998. Extradition between the United Kingdom and the Hong Kong Special Administrative Region is not, as far as the law of the United Kingdom is concerned, dependent on the existence of this agreement, owing to the amendments made to the Extradition Act 1989 by the Hong Kong (Extradition) Order 1997, SI 1997/1178.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(2) SCHEDULE 1 TREATIES/1158. Bilateral extradition treaties.

(2) SCHEDULE 1 TREATIES

1158. Bilateral extradition treaties.

Extradition treaties exist between the United Kingdom¹ and the foreign states listed below, and Orders in Council under the Extradition Act 1870² are in force in relation to them³: Argentine Republic⁴; Bolivia⁵; Chile⁶; Colombia⁷; Cuba⁸; Ecuador⁹; El Salvador¹⁰; Guatemala¹¹; Haiti¹²; Iraq¹³; Liberia¹⁴; Mexico¹⁵; Monaco¹⁶; Nicaragua¹⁷; Panama¹⁸; Paraguay¹⁹; Peru²⁰; San Marino²¹; Thailand²²; the United States of America²³; Uruguay²⁴; and the Federal Republic of Yugoslavia²⁵. These arrangements extend to extradition between the above foreign states and United Kingdom colonies²⁶.

Provision is made for the revocation of certain Orders in Council made under the Extradition Act 1870²⁷. However, these Orders are to continue to have effect:

- 20 (1) for the purposes of disposing of any requisition for surrender of a fugitive criminal to a Convention State²⁸ in respect of which an order to proceed²⁹ was made before the revocation of the Order took effect³⁰; and
- 21 (2) in so far as they relate to extradition between any territory for whose international relations a Convention State is responsible, but to which the European Convention on Extradition 1957 does not apply, and the United Kingdom, the Channel Islands, the Isle of Man and any colony³¹,

to the extent specified³² in Schedule 1 to the Extradition Act 1989³³. These provisions relate to the Orders in Council made in respect of the following countries: Albania³⁴, Austria³⁵, Belgium³⁶, Czechoslovakia³⁷, Denmark³⁸, Finland³⁹, France⁴⁰, the Federal Republic of Germany⁴¹, Greece⁴², Hungary⁴³, Iceland⁴⁴, Israel⁴⁵, Italy⁴⁶, Luxembourg⁴⁷, the Netherlands⁴⁸, Norway⁴⁹, Poland⁵⁰, Portugal⁵¹, Romania⁵², Spain⁵³, Sweden⁵⁴ and Switzerland⁵⁵. These revoked Orders in Council also govern extradition between the above foreign states and United Kingdom colonies, except as provided by other Orders in Council⁵⁶. The Order in Council under the Extradition Act 1870 relating to the treaty with Yugoslavia (Serbia, formerly Servia)⁵⁷ has been revoked, so far as it relates to extradition between Croatia or Slovenia and the United Kingdom, the Channel Islands, the Isle of Man or any colony⁵⁸. The Orders in Council under the Extradition Act 1870 relating to the treaties with Lithuania⁵⁹, Estonia⁶⁰, and Latvia⁶¹ have been revoked, but these treaties were already considered by the United Kingdom government to have lapsed. The treaty with Russia is regarded as inoperative⁶².

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 Extradition Act 1870 s 2 (repealed). The repeal of the Extradition Act 1870 does not affect Orders in Council made under s 2: Extradition Act 1989 s 37(3).

3 Where an Order in Council under the Extradition Act 1870 s 2 (repealed) is in force in relation to a foreign state, the Extradition Act 1989 s 1(3), Sch 1 (as amended) (the provisions of which derive from that Act and certain associated enactments) has effect in relation to that state, but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the Order: Extradition Act 1989 s 1(3). See also 309 HC Official Report (6th series), 25 March 1998, cols 198-199, which refers to the treaties in notes 4-25 infra and also to the treaties with Albania (as to which see note 34 infra) and with Brazil (as to which see PARA 1156 ante).

The Orders in Council referred to in the notes infra which were made before 1948 and were then still in force are set out in SR & O Rev 1948 IX.

4 Order in Council directing that the Extradition Acts shall apply in the case of the Argentine Republic, SR & O 1894/76; Argentine Republic (Extradition) (Amendment) Order 1980, SI 1980/185 (Treaty signed at Buenos Aires, 22 May 1889; TS 2 (1894); C 7260; with Protocol (Buenos Aires, 12 December 1890); and Exchange of Notes (Buenos Aires, 19 November 1979; TS 35; Cmnd 7871)).

5 Order in Council directing that the Extradition Acts shall apply in the case of Bolivia, SR & O 1898/1065 (Treaty signed at Lima, 22 February 1892; TS 10 (1899); C 9239).

6 Order in Council directing that the Extradition Acts shall apply in the case of Chile, SR & O 1898/597 (Treaty signed at Santiago, 26 January 1897; TS 12 (1898); C 9051).

7 Order in Council directing that the Extradition Acts shall apply in the case of Colombia, dated 28 November 1889 (Treaty signed at Bogotá, 27 October 1888; 79 BFSP 12; C 5902).

8 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Cuba, SR & O 1905/558 (Treaty signed at Havana, 3 October 1904; TS 15 (1905); Cd 2530).

9 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Ecuador, dated 26 June 1886 (Treaty signed at Quito, 20 September 1880; 72 BFSP 137; C 4786).

10 Order in Council directing that the Extradition Acts shall apply in the case of Salvador, dated 16 December 1882 (Treaty signed at Paris, 23 June 1881; 72 BFSP 13; C 3445).

11 Order in Council directing that the Extradition Acts shall apply in the case of Guatemala, dated 26 November 1886; and Order in Council directing that the Extradition Acts shall apply in the case of Guatemala, SR & O 1914/1323 (Treaty signed at Guatemala, 4 July 1885; 76 BFSP 72; C 4920; with Protocol (Guatemala City, 30 May 1914; TS 12 (1914); Cd 7625)).

12 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Hayti, dated 5 February 1876 (Treaty signed at Port au Prince, 7 December 1874; 65 BFSP 44; C 1385).

13 Iraq (Extradition) Order in Council 1933, SR & O 1933/357 (Treaty signed at Baghdad, 2 May 1932; TS 13 (1933); Cmd 4317).

14 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Liberia, SR & O 1894/114 (Treaty signed at London, 16 December 1892; TS 6 (1894); C 7306).

15 Order in Council directing that the Extradition Acts shall apply in the case of the United States of Mexico, dated 6 April 1889 (Treaty signed at Mexico City, 7 September 1886; 77 BFSP 1253; C 5670).

16 Order in Council directing that the Extradition Acts shall apply in the case of Monaco, dated 9 May 1892 (Treaty signed at Paris, 17 December 1891; TS 10 (1892); C 6552).

17 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Nicaragua, SR & O 1906/382 (Treaty signed at Managua, 19 April 1905; TS 7 (1906); Cd 3001).

18 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Panama, SR & O 1907/648 (Treaty signed at Panama, 25 August 1906; TS 25 (1907); Cd 3648).

19 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Paraguay, SR & O 1911/662 (Treaty signed at Asuncion, 12 September 1908; TS 19 (1911); Cd 5737).

20 Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Peru, SR & O 1907/383 (Treaty signed at Lima, 26 January 1904; TS 13 (1907); Cd 3498).

21 Order in Council directing that the Extradition Acts shall apply in the case of San Marino, SR & O 1900/168 (Treaty signed at Florence, 16 October 1899; TS 9 (1900); Cd 40).

22 Order in Council directing that the Extradition Acts shall apply in the case of Siam, SR & O 1911/1151 (Treaty signed at Bangkok, 4 March 1911; TS 23 (1911); Cd 5861).

23 United States of America (Extradition) Order 1976, SI 1976/2144 (amended by SI 1986/2020) (Treaty signed at London, 8 June 1972; extended by Exchange of Notes, 21 October 1976; Treaty, as extended, republished TS 16 (1977); Cmnd 6723; Treaty amended by a Supplementary Treaty (Washington, 25 June 1985; TS 6 (1988); Cmnd 294) (as amended by an Exchange of Notes (Washington, 19 and 20 August 1986)).

24 Orders in Council directing that the Extradition Acts shall apply in the case of Uruguay, dated 5 March 1885 and 24 November 1891 (Treaty signed at Montevideo, 26 March 1884; 75 BFSP 18; C 4282; with Protocol (Montevideo, 20 March 1891; TS 4 (1892); C 6593)).

25 Order in Council directing that the Extradition Acts shall apply in the case of Servia, SR & O 1901/586 (Treaty signed at Belgrade, 6 December 1900; TS 8 (1901); Cd 797). The Federal Republic of Yugoslavia no longer exists. The former Yugoslavia is now divided into different states.

26 In the case of the treaties with Iraq and the United States of America, the arrangements also extend to extradition between Iraq or the United States, on the one hand, and the Channel Islands or the Isle of Man, on the other hand.

27 See the European Convention on Extradition Order 1990, SI 1990/1507, art 5(1), Sch 5 (as amended) (see PARA 1123 ante). As to the revoked orders see the text and notes 34-55 infra.

28 For the meaning of 'Convention State' see PARA 1121 ante.

29 Is an order under the Extradition Act 1989 Sch 1 para 4(2) (as amended): see PARA 1210 post.

30 European Convention on Extradition Order 1990, SI 1990/1507, art 5(2)(a) (amended by SI 1992/2663).

31 European Convention on Extradition Order 1990, SI 1990/1507, art 5(2)(b) (as amended: see note 30 supra).

32 Is specified in the Extradition Act 1989 Sch 1 (as amended).

33 European Convention on Extradition Order 1990, SI 1990/1507, art 5(2) (as amended: see note 30 supra).

34 Albania (Extradition) Order in Council 1927, SR & O 1927/605 (Treaty signed at Tirana, 22 July 1926; TS 20 (1927); Cmd 2920).

35 Austria (Extradition) Order 1970, SI 1970/1111; Austria (Extradition) (Extension) Order 1972, SI 1972/1581 (Treaty signed at Vienna, 9 January 1963; TS 68 (1970); Cmnd 4438; with Protocol (Vienna, 15 January 1969; TS 68 (1970); Cmnd 4438); and Exchange of Notes (London, 25 August 1971; TS 127 (1972); Cmnd 5237)).

36 Orders in Council directing that the Extradition Acts shall apply in the case of Belgium, SR & O 1902/208; SR & O 1907/544; SR & O 1911/793; Belgium (Extradition) (Amendment) Order 1975, SI 1975/1034; Belgium (Extradition) (Amendment) Order 1985, SI 1985/1634 (Treaty signed at Brussels, 29 October 1901; TS 7 (1902); Cd 1008; with Supplementary Conventions (London, 5 March 1907; TS 16 (1907); Cd 3580; and London, 3 March 1911; TS 21 (1911); Cd 5807); and Exchanges of Notes (Brussels, 15 May 1975; TS 107 (1975); Cmnd 6203; and London, 10 September 1985; TS 59 (1985); Cmnd 9659)).

37 Czechoslovakia (Extradition) Order in Council 1926, SR & O 1926/1466 (Treaty signed at London, 11 November 1924; TS 31 (1926); Cmd 2779; with Protocol (London, 4 June 1926; TS 31 (1926); Cmd 2779)). Czechoslovakia no longer exists. The former Czechoslovakia is now divided into the two separate sovereign states of the Czech Republic and Slovakia.

38 Order in Council directing that the Extradition Acts shall apply in the case of the Kingdom of Denmark, dated 26 June 1873; Denmark (Extradition) Order in Council 1936, SR & O 1936/405; Denmark (Extradition) (Amendment) Order 1979, SI 1979/1311 (Treaty signed at Copenhagen, 31 March 1873; 63 BFSP 5; C 779; with Supplementary Convention (Copenhagen, 15 October 1935; TS 8 (1936); Cmd 5172); and Exchange of Notes (Copenhagen, 24 August 1979; TS 106 (1979); Cmnd 7753)).

39 Finland (Extradition) Order 1976, SI 1976/1037 (Treaty signed at London, 29 October 1975; extended by Exchange of Notes dated 12 May 1976; Treaty, as extended, republished TS 23 (1977); Cmnd 6741).

40 Orders in Council directing that the Extradition Acts shall apply in the case of France, dated 16 May 1878; and SR & O 1896/54; SR & O 1909/1458; France (Extradition) (Amendment) Order 1978, SI 1978/455 (Treaty signed at Paris, 14 August 1876; 67 BFSP 5; C 2008; with Supplementary Conventions (Paris, 13 February 1896; TS 4 (1896); C 7973; and Paris, 17 October 1908; TS 34 (1909); Cd 4965); and Exchange of Notes (Paris, 16 February 1978; TS 62 (1978); Cmnd 7241)).

41 Federal Republic of Germany (Extradition) Order 1960, SI 1960/1375; Federal Republic of Germany (Extradition) (Amendment) Order 1978, SI 1978/1403 (Treaty signed at London, 14 May 1872; 62 BFSP 5; C 564; with Agreement (Bonn, 23 February 1960; TS 70 (1960); Cmnd 1200); and Exchanges of Notes (Bonn, 16 July 1960; TS 70 (1960); Cmnd 1200; and London, 25 and 27 September 1978; TS 5 (1979); Cmnd 7421)). Since

unification, the Land of Berlin and those Länder which used to form the German Democratic Republic are part of the Federal Republic of Germany: see Oppenheim's International Law (9th Edn) Vol 1 pp 135-141, 210 para 62; British Year Book of International Law 1997 pp 520-529.

42 Order in Council directing that the Extradition Acts shall apply in the case of Greece, SR & O 1912/193 (Treaty signed at Athens, 11 and 24 September 1910; TS 6 (1912); Cd 6074).

43 Order in Council directing that the Extradition Acts shall apply in the case of Austria - Hungary, dated 17 March 1874 (spent as regards Austria); Hungary (Extradition) Order in Council 1937, SR & O 1937/719 (Treaty signed at Vienna, 3 December 1873; 63 BFSP 213; C 916; and Supplementary Treaty (Budapest, 18 September 1936; TS 32 (1937); Cmd 5550)).

44 Iceland (Extradition) Order in Council 1939, SR & O 1939/825 (Supplementary Convention to the Treaty with Denmark of 31 March 1873 (see note 38 supra), signed at London, 25 October 1938; TS 40 (1939); Cmd 6083).

45 Israel (Extradition) Order 1960, SI 1960/1660; Israel (Extradition) (Amendment) Order 1978, SI 1978/1623 (Treaty signed at London, 4 April 1960; TS 77 (1960); Cmnd 1223; and Exchange of Notes (Jerusalem/Tel Aviv, 16 August 1978; TS 99 (1978); Cmnd 7375)).

46 Order in Council directing that the Extradition Acts shall apply in the case of Italy, dated 24 March 1873 (Treaty signed at Rome, 5 February 1873; 63 BFSP 19; C 708).

47 Order in Council directing that the Extradition Acts shall apply in the case of the Grand Duchy of Luxembourg, dated 2 March 1881; Luxembourg (Extradition) Order in Council 1951, SI 1951/1170 (Treaty signed at Luxembourg, 24 November 1880; 71 BFSP 48; C 2803; with Supplementary Convention (Luxembourg, 29 May 1939; TS 59 (1951); Cmd 8321)).

48 Order in Council directing that the Extradition Acts shall apply in the case of the Netherlands, SR & O 1899/83 (Treaty signed at London, 26 September 1898; TS 1 (1899); C 9089).

49 Order in Council directing that the Extradition Acts shall apply in the case of the Kingdom of Norway, dated 30 September 1873; and SR & O 1907/545; Norway (Extradition) (Amendment) Order 1979, SI 1979/913; Norway (Extradition) (Amendment) Order 1985, SI 1985/1637 (Treaty signed at Stockholm on 26 June 1873; 63 BFSP 175; C 900; with Agreement (Kristiania, 18 February 1907; TS 19 (1907); Cd 3606); and Exchanges of Notes (Oslo, 9 August 1973; TS 12 (1974); Cmnd 5522; and Oslo, 5 August 1985; TS 6 (1986); Cmnd 9707)).

50 Poland (Extradition) Order in Council 1934, SR & O 1934/209 (Treaty signed at Warsaw, 11 January 1932; TS 10 (1934); Cmd 4552).

51 Order in Council directing that the Extradition Acts shall apply in the case of Portugal, SR & O 1894/102; Portugal (Extradition) Order in Council 1933, SR & O 1933/678 (Treaty signed at Lisbon, 17 October 1892; TS 7 (1894); C 7307; with Protocol (Lisbon, 30 November 1892; TS 7 (1894); C 7307); and Supplementary Convention (Lisbon, 20 January 1932; TS 28 (1933); Cmd 4401)).

52 Order in Council directing that the Extradition Acts shall apply in the case of Roumania, SR & O 1894/119 (Treaty signed at Bucharest, 21 March 1893; TS 14 (1894); C 7357; with Protocol (Bucharest, 21 March 1893; TS 14 (1894); C 7357)).

53 Spain (Extradition) Order 1986, SI 1986/766 (Treaty signed at London, 22 July 1985; TS 40 (1986); Cmnd 9869). With regard to extradition between Spain and United Kingdom dependent territories see the Spain (Extradition) (Dependent Territories) Order 1991, SI 1991/997, which has not been revoked and provides for extradition (under the above Treaty of 22 July 1985) between Spain and the following United Kingdom dependent territories: (1) Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, St Helena Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, Turks and Caicos Islands; and (2) Gibraltar, pursuant to two Exchanges of Notes constituting an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Spain to extend the extradition treaty of 22 July 1985 to Gibraltar (Madrid, 1 February 1991; TS 101 (1991); Cm 1739).

54 Sweden (Extradition) Order 1966, SI 1966/226; Sweden (Extradition) (Extension) Order 1966, SI 1966/811; Sweden (Extradition) (Amendment) Order 1980, SI 1980/566 (Treaty signed at London, 26 April 1963; TS 62 (1966); Cmnd 3113; with Protocol (London, 6 December 1965; TS 62 (1966); Cmnd 3113); and Exchange of Notes (Stockholm, 19 February 1980; TS 53 (1980); Cmnd 7946)).

55 Orders in Council directing that the Extradition Acts shall apply in the case of Switzerland, dated 18 May 1881; and SR & O 1905/616; Switzerland (Extradition) Order in Council 1935, SR & O 1935/676 (Treaty signed at

Berne, 26 November 1880; 71 BFSP 54; C 2885; with Supplementary Conventions (London, 29 June 1904; TS 16 (1905); Cd 2532; and Berne, 19 December 1934; TS 29 (1935); Cmd 4975)).

56 The European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, provides for extradition between certain Convention States (ie Finland, Hungary, Israel, Liechtenstein, Norway, Poland and Switzerland) and certain United Kingdom dependent territories, pursuant to the European Convention on Extradition 1957 (see PARA 1121 note 41 ante): see the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, arts 1, 2, Sch 1 Pt I. It revokes the Orders in Council listed in the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, Sch 3 and made under the Extradition Act 1870 (repealed) in respect of the Convention States concerned in so far as the Orders related to the dependent territories listed in the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875, Sch 1 Pt II (ie Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falklands Islands, Gibraltar, Montserrat, St Helena and Dependencies, South Georgia and South Sandwich Islands, Turks and Caicos Islands, Virgin Islands): art 3.

As to Spain and United Kingdom dependent territories see note 53 supra.

57 Order in Council directing that the Extradition Acts shall apply in the case of Serbia, SR & O 1901/586.

58 European Convention on Extradition Order 1990, SI 1990/1507, Sch 5 Pt 4 (added by SI 1995/1962).

59 Order in Council dated 26 May 1927 directing that the Extradition Acts shall apply in the case of the Republic of Lithuania, SR & O 1927/504 (Treaty signed at Kaunas (Kovno), 18 May 1926; TS 15 (1927); Cmd 2897). See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 5 Pt 5 (added by SI 1995/2703).

60 Order in Council dated 28 June 1926 directing that the Extradition Acts shall apply in the case of the Republic of Estonia, SR & O 1926/840 (Treaty signed at London, 18 November 1925; TS 18 (1926); Cmd 2708). See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 5 Pt 6 (added by SI 1997/2596).

61 Order in Council dated 12 October 1925 directing that the Extradition Acts shall apply in the case of the Republic of Latvia, SR & O 1925/1029 (Treaty signed at Riga, 16 July 1924; TS 44 (1925); Cmd 2519). See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 5 Pt 6 (as added: see note 60 supra).

62 Treaty with Russia signed at London, 24 November 1886; 77 BFSP 107; C 4992: see 478 HC Official Report (5th series) col 462. See also the Order in Council directing that the Extradition Acts shall apply in the case of Russia dated 7 March 1887, which is regarded as spent: see Table of Government Orders Covering General Instruments to 31 December 1990, p 13.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1158 Bilateral extradition treaties

TEXT AND NOTE 25--SR & O 1901/586 revoked: SI 2001/962.

TEXT AND NOTES 27-61--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(2) SCHEDULE 1 TREATIES/1159. International Convention for the Suppression of White Slave Traffic.

1159. International Convention for the Suppression of White Slave Traffic.

In relation to certain of the states with which the United Kingdom has extradition treaties¹, the treaties are supplemented by the provisions of the International Convention for the Suppression of White Slave Traffic² to which those states and the United Kingdom are parties³. The Convention provides, inter alia, that defined acts, relating to the international traffic in prostitution, constitute, in the laws of each contracting party, extradition crimes in relation to each other such party, in accordance with their existing extradition arrangements⁴.

¹ The treaties in respect of which an Order in Council has been made under Extradition Act 1870 s 2 (repealed): see PARA 1158 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

² See the International Convention for the Suppression of the White Slave Traffic (Paris, 4 May 1910; TS 20 (1912); Cd 6326).

³ With regard to those states with which the United Kingdom has treaties in relation to which Orders in Council have been made under the Extradition Act 1870 s 2 (repealed), which Orders have not been revoked (see PARA 1158 notes 4-25 ante), the following Orders in Council (saved by the Extradition Act 1989 s 37(3): see PARA 1194 ante) have been made relating to the International Convention for the Suppression of White Slave Traffic: (1) Extradition, Certain Foreign States (White Slave Traffic) Order in Council 1923, SR & O 1923/971, relating to Monaco, Thailand and Uruguay; (2) Extradition (Cuba, Italy, Luxembourg, Switzerland and Yugoslavia) (White Slave Trade) Order 1931, SR & O 1931/718, relating to Cuba and Yugoslavia. Yugoslavia no longer exists. The former Yugoslavia is now divided into different states.

With regard to those states with which the United Kingdom signed treaties in relation to which Orders in Council have been made under the Extradition Act 1870 s 2 (repealed), which Orders have been revoked (see PARA 1158 notes 4-25 ante), the following Orders in Council (saved by the Extradition Act 1989 s 37(3) to the extent that they have not been revoked) have been made relating to the International Convention for the Suppression of White Slave Traffic: (a) Extradition, Certain Foreign States (White Slave Traffic) Order in Council 1923, SR & O 1923/971, relating to Belgium, France, Hungary, the Netherlands, Norway and Portugal; (b) Extradition (Cuba, Italy, Luxembourg, Switzerland and Yugoslavia) (White Slave Trade) Order 1931, SR & O 1931/718, relating to Italy, Luxembourg and Switzerland; (c) Extradition (Denmark) (White Slave Traffic) Order in Council 1934, SR & O 1934/500.

The other states party to the International Convention for the Suppression of White Slave Traffic are Austria (see the Austria (Extradition) Order 1970, SI 1970/1111; and the Austria (Extradition) (Extension) Order 1972, SI 1972/1581), Germany (see the Federal Republic of Germany (Extradition) Order 1960, SI 1960/1375; and the Federal Republic of Germany (Extradition) (Amendment) Order 1978, SI 1978/1403), Spain (see the Spain (Extradition) Order 1986, SI 1986/766) and Sweden (see the Sweden (Extradition) Order 1966, SI 1966/226; the Sweden (Extradition) (Extension) Order 1966, SI 1966/811; and the Sweden (Extradition) (Amendment) Order 1980, SI 1980/566).

⁴ See the International Convention for the Suppression of White Slave Traffic Arts 1, 2, 5.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1159 International Convention for the Suppression of White Slave Traffic

NOTE 3--SR & O 1931/718 revoked: SI 2001/962.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(2) SCHEDULE 1 TREATIES/1160. Convention on the Prevention and Punishment of the Crime of Genocide.

1160. Convention on the Prevention and Punishment of the Crime of Genocide.

In relation to certain of the states with which the United Kingdom has extradition treaties¹, the treaties are supplemented by the Convention on the Prevention and Punishment of the Crime of Genocide², to which those states and the United Kingdom are parties³. These provisions also apply to the Channel Islands and the Isle of Man and to certain United Kingdom colonies⁴.

For the purposes of the Extradition Act 1989, no offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence, is to be regarded as an offence of a political character, and no proceedings in respect of such an offence are to be regarded as a criminal matter of a political character⁵. It is not an objection to any proceedings against a person under the Extradition Act 1989 in respect of an offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence, that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he was convicted, he could not have been punished for it⁶.

¹ The treaties in respect of which an Order in Council has been made under the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

² See the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948; TS58 (1970); Cmnd 4421). 'Genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (1) killing members of the group; (2) causing serious bodily or mental harm to members of the group; (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (4) imposing measures intended to prevent births within the group; (5) forcibly transferring children of the group to another group: Art II (set out in the Genocide Act 1969 s 1(1), Schedule).

³ See the Extradition (Genocide) Order 1970, SI 1970/147, art 3. With regard to those states in relation to which Orders in Council have been made under the Extradition Act 1870 s 2 (repealed), which Orders have not been revoked (see PARA 1158 notes 4-25 ante), the Extradition (Genocide) Order 1970, SI 1970/147 (as amended) has been made in relation to Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Iraq, Liberia, Mexico, Monaco, Nicaragua, Panama, Peru, Uruguay and Yugoslavia: see Sch 2 (amended by SI 1982/145; SI 1986/2011). Yugoslavia no longer exists. The former Yugoslavia is now divided into different states.

With regard to those states with which the United Kingdom signed treaties in relation to which Orders in Council have been made under the Extradition Act 1870 s 2 (repealed), which orders have been revoked to the extent set out in PARA 1158 ante, the Extradition (Genocide) Order 1970, SI 1970/147 (saved by the Extradition Act 1989 s 37(3) to the extent that they have not been revoked) has been made relating to Albania, Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Israel, Italy, Luxembourg, the Netherlands, Norway, Poland, Romania, Spain and Sweden: see the Extradition (Genocide) Order 1970, SI 1970/147, Sch 2 (as so amended). Czechoslovakia no longer exists. The former Czechoslovakia is now divided into the two separate sovereign states of the Czech Republic and Slovakia.

⁴ Ibid art 4, Sch 3 (amended by SI 1982/145; SI 1987/453). The colonies in question are: Anguilla, Bermuda, British Virgin Islands, Falkland Islands and Dependencies, Gibraltar, Pitcairn, St Helena and Turks and Caicos Islands.

⁵ See the Extradition Act 1989 s 23(1); and PARA 1178 post. As to offences of a political character see PARA 1175 et seq post.

⁶ See ibid s 23(2); and PARA 1178 post.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(3) INTERNATIONAL CONVENTIONS/1161. European Convention on the Suppression of Terrorism.

(3) INTERNATIONAL CONVENTIONS

1161. European Convention on the Suppression of Terrorism.

The Suppression of Terrorism Act 1978 was passed to give effect to the European Convention on the Suppression of Terrorism¹. Certain provisions of the Suppression of Terrorism Act 1978 and the Extradition Act 1989 apply to a convention country². The Secretary of State may by order direct that all or any of the provisions of the Suppression of Terrorism Act 1978³ and certain provisions of the Extradition Act 1989⁴ are to apply in relation to a designated Commonwealth country⁵ or to a foreign state with which there are in force extradition arrangements of the kind described in the Extradition Act 1870⁶ or in the Extradition Act 1989 with respect to the surrender to that state of fugitive criminals⁷.

The Suppression of Terrorism Act 1978 extends to the Channel Islands and the Isle of Man and has effect as if each of them were part of the United Kingdom⁸, subject to any exceptions, adaptations or modifications specified in any Order in Council⁹. Her Majesty may by Order in Council make provision for extending the provisions of the Suppression of Terrorism Act 1978 to any colony, other than a colony for whose external relations a country other than the United Kingdom is responsible, or any country outside Her Majesty's dominions in which she has jurisdiction in right of the government of the United Kingdom¹⁰.

Certain Member States (including the United Kingdom) of the European Communities have reached an agreement on the application of the European Convention on the Suppression of Terrorism between two Member States of which one at least is not a party to the European Convention or is a party to that Convention, but with a reservation¹¹. The United Kingdom has not ratified the agreement.

1 See the European Convention on the Suppression of Terrorism (Strasbourg, 27 January 1977; TS 93 (1978); Cmnd 7390). The Convention entered into force for the United Kingdom on 25 October 1978.

2 See the Suppression of Terrorism Act 1978 s 4 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1063); and the Extradition Act 1989 s 24(1)-(3) (see PARA 1176 post).

'Convention country' means a country for the time being designated in an order made by the Secretary of State as a party to the European Convention on the Suppression of Terrorism: Suppression of Terrorism Act 1978 s 8(1). The following countries have been designated in such orders as convention countries: Austria, Denmark, Federal Republic of Germany and Sweden (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1978, SI 1978/1245); Cyprus (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1979, SI 1979/497); Norway (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1980, SI 1980/357); Iceland (see the Suppression of Terrorism Act 1978 (Designation of Countries) (No 2) Order 1980, SI 1980/1392); Spain and Turkey (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1981, SI 1981/1389); Luxembourg (see the Suppression of Terrorism Act 1978 (Designation of Countries) (No 2) Order 1981, SI 1981/1507); Belgium, the Netherlands, Portugal and Switzerland (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1986, SI 1986/271); Italy and Liechtenstein (see the Suppression of Terrorism Act 1978 (Designation of Countries) (No 2) Order 1986, SI 1986/1137); France (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1987, SI 1987/2137); the Republic of Ireland (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1989, SI 1989/2210); Finland and Greece (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1990, SI 1990/1272); the Czech Republic and Slovakia (see the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1994, SI 1994/2978). As to the Suppression of Terrorism Act 1989 (Application of Provisions) (Republic of Ireland) Order 1989, SI 1989/2323, see PARA 1295 post. As to the Secretary of State see PARA 1161 ante.

3 le the provisions of the Suppression of Terrorism Act 1978 which would, apart from s 5 (as amended), apply only in relation to convention countries: s 5(1A)(a) (s 5(1A) added by the Extradition Act 1989 s 36(8)).

4 le the Extradition Act 1989 s 24(1), (2) (see PARA 1176 post): Suppression of Terrorism Act 1978 s 5(1A)(b) (as added: see note 3 supra).

5 For the meaning of 'designated Commonwealth country' see PARA 1120 ante; definition applied by the Suppression of Terrorism Act 1978 s 5(1)(a) (amended by the Extradition Act 1989 s 36).

6 le in the Extradition Act 1870 s 2 (repealed).

7 Suppression of Terrorism Act 1978 s 5(1)(b) (amended by the Extradition Act 1989 s 36). In exercise of this power, the Secretary of State has made the Suppression of Terrorism Act 1978 (Application of Provisions) (India) Order 1993, SI 1993/2533, which provides that the provisions of the Suppression of Terrorism Act 1978 and the Extradition Act 1989 s 24(1)(a), (2)(a) apply in relation to India as they apply in relation to a convention country. India is a designated Commonwealth country within the meaning of the Extradition Act 1989: see 1120 note 20 ante. Also in exercise of the power contained in the Suppression of Terrorism Act 1978 s 5 (as amended), the Secretary of State has made the Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986, SI 1986/2146, which provides that certain provisions of the Suppression of Terrorism Act 1978 are to apply in relation to the United States of America as they apply to a convention country. The United States of America is a foreign country with which there are in force extradition arrangements of the kind described in the Extradition Act 1870 s 2 (repealed): see PARA 1158 note 23 ante.

8 Suppression of Terrorism Act 1978 s 7(1). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

9 Ibid s 7(2). The following orders have been made: the Suppression of Terrorism Act 1978 (Guernsey) Order 1978, SI 1978/1529; the Suppression of Terrorism Act 1978 (Isle of Man) Order 1978, SI 1978/1530; the Suppression of Terrorism Act 1978 (Jersey) Order 1978, SI 1978/1531. Such an order may be varied or revoked by a subsequent Order in Council: Suppression of Terrorism Act 1978 s 7(5).

10 Ibid s 7(3). The Suppression of Terrorism Act 1978 (Overseas Territories) Order 1986, SI 1986/2019, has been made under this power and extends certain provisions of the Suppression of Terrorism Act 1978, subject to exceptions, adaptations and modifications, to the following colonies and territories: Anguilla, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Falkland Island Dependencies, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, St Helena Dependencies, the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus and the Turks and Caicos Islands.

An Order in Council under the Suppression of Terrorism Act 1978 s 7(3) is subject to annulment in pursuance of a resolution of either House of Parliament (s 7(4)), and may be varied or revoked by a subsequent Order in Council (s 7(5)).

11 See the Agreement concerning the Application of the European Convention on the Suppression of Terrorism among the Member States of the European Communities (Dublin, 4 December 1979; Misc 5 (1980); Cmnd 7823).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1161 European Convention on the Suppression of Terrorism

NOTE 2--The following countries have also been designated as convention countries: Albania, Bulgaria, Croatia, Estonia, Georgia, Hungary, Latvia, Lithuania, Malta, Moldova, Poland, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovenia and Ukraine: Suppression of Terrorism Act 1978 (Designation of Countries) Order 2003, SI 2003/6; Suppression of Terrorism Act 1978 (Designation of Countries) (No 2) Order 2003, SI 2003/1863.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(3) INTERNATIONAL CONVENTIONS/1162. Other international conventions.

1162. Other international conventions.

Where no general extradition arrangements have been made with a state which is a party to certain conventions¹ and no Order in Council under the Extradition Act 1870² is in force in relation to that state³, an Order in Council may be made under the Extradition Act 1989⁴ as if any such convention specified in the order constituted general extradition arrangements⁵ between the United Kingdom⁶ and the foreign state in respect of the relevant offences⁷. A number of such Orders in Council have been made which also provide that the relevant provisions of the Extradition Act 1989⁸ are to apply to states, which are party to the convention in question and in respect of which Orders in Council have been made under the Extradition Act 1870⁹, in accordance with the relevant extradition treaty as supplemented by certain provisions of the convention in question, and any Order in Council under the Extradition Act 1870 is to be construed accordingly¹⁰.

Orders in Council have been made in respect of the following conventions: (1) the Tokyo Convention¹¹; (2) the Hague Convention¹²; (3) the Montreal Convention and the Montreal Protocol¹³; (4) the Internationally Protected Persons Convention¹⁴; (5) the Hostages Convention¹⁵; (6) the Nuclear Material Convention¹⁶; (7) the Torture Convention¹⁷; (8) the Vienna Convention¹⁸; and (9) the Rome Convention and the Rome Protocol¹⁹. No Order in Council has been made in respect of the UN Personnel Convention²⁰.

Each of the Orders in Council which have been made provides that no proceedings are to be taken on an application for a provisional warrant to be issued under the Extradition Act 1989²¹, and no such warrant is to be issued unless the application is made with the consent of the Secretary of State²². Such Orders in Council²³ may not provide that a court dealing with a person arrested for an offence is not to be under a duty²⁴ to determine whether the evidence would be sufficient to make a case requiring an answer by that person if the proceedings were the summary trial of an information against him²⁵.

For the purposes of general extradition procedures under Part III of the Extradition Act 1989²⁶, in their application²⁷ as between the United Kingdom and any other state, any act or omission, wherever it takes places, which constitutes (a) a relevant offence²⁸; and (b) an offence under the law of that state, is deemed to be an offence committed within the territory of that state²⁹.

1 I.e. the conventions listed in the Extradition Act 1989 s 22(2) (as amended); see the text and notes 11-20 *infra*.

2 I.e. under the Extradition Act 1870 s 2 (repealed).

3 Extradition Act 1989 s 22(1).

4 I.e. under *ibid* s 4 (as amended); see *PARA* 1170 *post*.

5 I.e. under *ibid* Pt III (ss 7-17) (as amended).

6 For the meaning of 'United Kingdom' see *PARA* 1101 note 10 *ante*.

7 Extradition Act 1989 s 22(3)(a). The relevant offences are listed in s 22(4) (as amended); see the text and notes 11-20 *infra*. In addition to the relevant offences themselves, the extradition arrangements are to have effect also in respect of (1) an attempt to commit a relevant offence (s 22(3)(b)); (2) counselling, procuring, commanding, aiding or abetting a relevant offence (s 22(3)(c)); and (3) being an accessory before or after the fact to a relevant offence (s 22(3)(d)).

8 le the Extradition Act 1989 Sch 1 (as amended). As to proceedings under Sch 1 (as amended) see PARA 1209 et seq post.

9 le under the Extradition Act 1870 s 2 (repealed).

10 See the text and notes 11-19 infra.

11 See the Extradition Act 1989 s 22(2)(a); the Extradition (Tokyo Convention) Order 1997, SI 1997/1768; and the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963; TS 126 (1969); Cmnd 4230). The Convention entered into force for the United Kingdom on 4 December 1969. The Tokyo Convention is set out in the Extradition (Tokyo Convention) Order 1997, SI 1997/1768, Sch 1.

The relevant offences for the purposes of the Extradition Act 1989 s 22 (as amended), in relation to the Tokyo Convention, are any offence committed on board an aircraft in flight (Extradition Act 1989 s 22(4)(a)). The period during which an aircraft is in flight is deemed to include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and any reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country: see the Civil Aviation Act 1982 s 92(4), (5) (as amended) (see AIR LAW vol 2 (2008) PARA 619); applied by the Extradition Act 1989 s 22(7).

The foreign states which are parties to the Tokyo Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations, restrictions, exceptions and qualifications in the Extradition (Tokyo Convention) Order 1997, SI 1997/1768, Sch 3 Pt II are: Afghanistan, Algeria, Bahrain, Belarus, Bhutan, Bosnia and Herzegovina, Burundi, Cape Verde, Central African Republic, Chad, People's Republic of China, Comoro Islands, Congo, Democratic Republic of Congo, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Egypt, Equatorial Guinea, Ethiopia, Gabon, Georgia, Guinea, Honduras, Indonesia, Iran, Japan, Jordan, Kazakhstan, Democratic People's Republic of Korea, Republic of Korea, Laos, Lebanon, Libya, former Yugoslav Republic of Macedonia, Madagascar, Marshall Islands, Mauritania, Mongolia, Morocco, Myanmar, Nepal, Niger, Oman, Palau, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Surinam, Syria, Tajikistan, Togo, Tunisia, United Arab Emirates, Upper Volta, Uzbekistan, Venezuela, Vietnam and Yemen: art 3, Sch 3 Pt I. Estonia and Ukraine are also listed in Sch 3 Pt I, but have since become parties to the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see PARA 1121 text and notes 14, 40 ante. As to the European Convention on Extradition 1957 see PARA 1121 et seq ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1.

With regard to those foreign states which are parties to the Tokyo Convention and with which the United Kingdom has extradition treaties, in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Tokyo Convention Art 16 para 1 and the relevant Orders in Council are construed accordingly: see the Extradition (Tokyo Convention) Order 1997, SI 1997/1768, art 2(2). Offences committed on aircraft registered in a contracting state are to be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the state of registration of the aircraft: Tokyo Convention Art 16 para 1 (set out in the Extradition (Tokyo Convention) Order 1997, SI 1997/1768, Sch 1 Ch VI). The foreign states concerned are: Argentina, Bolivia, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Iraq, Mexico, Monaco, Nicaragua, Panama, PARAGUAY, Peru, Russian Federation (but see PARA 1158 text and note 62 ante), Thailand, United States of America, Uruguay and Yugoslavia: Extradition (Tokyo Convention) Order 1997, SI 1997/1768, art 2(1), Sch 2. Belgium and Romania are also listed in Sch 2, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 notes 8, 33 ante. Yugoslavia no longer exists. The former Yugoslavia is now divided into different states. If the Secretary of State is satisfied that the requirements of the Tokyo Convention Art 18 have been satisfied (which makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organisations or international operating agencies established by two or more convention countries) the Secretary of State may by order provide that for the purposes of the Civil Aviation Act 1982 ss 92-95 (as amended) (see AIR LAW vol 2 (2008) PARA 615 et seq) and for the purposes of the Extradition Act 1989 s 22 (as amended), such aircraft as may be specified in the order is to be treated as registered in such convention country as may be so specified: Extradition Act 1989 s 22(8). As to the Secretary of State see PARA 1116 ante.

The Extradition (Tokyo Convention) Order 1997, SI 1997/1768, also extends to the Channel Islands and the Isle of Man (art 5) and to the following United Kingdom territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands and Dependencies, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, Sovereign Base Areas of Akrotiri and Dhekelia and Turks and Caicos Islands (Sch 4).

12 See the Extradition Act 1989 s 22(2)(b); the Extradition (Hijacking) Order 1997, SI 1997/1763; and the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970; TS 39 (1972); Cmnd 4956). The Convention entered into force for the United Kingdom on 21 January 1972 and is set out in the Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 1.

The relevant offences for the purposes of the Extradition Act 1989 s 22 (as amended), in relation to the Hague Convention, are any offence under or by virtue of the Aviation Security Act 1982 s 1 or s 6(1) or s 6(2)(a) (see AIR LAW vol 2 (2008) PARAS 624-625): Extradition Act 1989 s 22(4)(b). The foreign states which are parties to the Hague Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations, restrictions, exceptions and qualifications in the Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 3 Pt II, are: Afghanistan, Bahrain, Belarus, Benin, Bhutan, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Central African Republic, Chad, People's Republic of China, Comoros, Congo, Democratic Republic of Congo, Costa Rica, Côte d'Ivoire, Dominican Republic, Egypt, Equatorial Guinea, Ethiopia, Gabon, Guinea, Guinea Bissau, Honduras, Indonesia, Iran, Japan, Jordan, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Laos, Lebanon, Libya, Madagascar, Mali, Marshall Islands, Mauritania, Mongolia, Morocco, Myanmar, Nepal, Niger, Oman, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sudan, Surinam, Syria, Togo, Tunisia, United Arab Emirates, Uzbekistan, Venezuela, Vietnam and Yemen: Sch 3 Pt I. Estonia and Ukraine are also listed in Sch 3 Pt I, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 14, 40 ante; and note 11 supra.

With regard to those foreign states which are parties to the Hague Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Hague Convention Art 8 paras 1, 4, and the relevant Orders in Council under the Extradition Act 1870 s 2 (repealed) are construed accordingly: Extradition (Hijacking) Order 1997, SI 1997/1763, art 2(2). 'The offence' is deemed to be included as an extraditable offence in any extradition treaty existing between contracting states: Hague Convention Art 8 para 1. 'The offence' (as defined in Art 1) equates to an offence under the Aviation Security Act 1982 s 1 (see AIR LAW vol 2 (2008) PARA 624) or an attempt to commit such an offence or being an accomplice. The offence is to be treated, for the purposes of extradition between contracting states, as if it had been committed not only in the place where it occurred, but also in the places provided for by the Hague Convention Art 4 para 1: Art 8 para 4. The foreign states to which the above provisions apply are the same as for the Tokyo Convention (see note 11 supra) with the addition of Liberia: Extradition (Hijacking) Order 1997, SI 1997/1763, art 2(1), Sch 2.

The Extradition (Hijacking) Order 1997, SI 1997/1763, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 4).

13 See the Extradition Act 1989 s 22(2)(c), (i) (s 22(2)(i) added by the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 9(2)); the Extradition (Aviation Security) Order 1997, SI 1997/1760; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971; TS 10 (1974); Cmnd 5524) (which entered into force for the United Kingdom on 24 November 1973); and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention (Montreal, 24 February 1988; TS 20 (1991); Cm 1470) (which entered into force for the United Kingdom on 15 December 1990). The Montreal Convention and the Montreal Protocol are set out in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Montreal Convention, are any offence under or by virtue of the Aviation Security Act 1982 s 2, s 3 or s 6(2)(b) or s 6(2)(c) (see AIR LAW vol 2 (2008) PARAS 628-629) (Extradition Act 1989 s 22(4)(c)) and, in relation to the Montreal Protocol, are an offence under the Aviation and Maritime Security Act 1990 s 1 (see AIR LAW vol 2 (2008) PARA 631) (Extradition Act 1989 22(4)(i) (added by the Aviation and Maritime Security Act 1990 Sch 3 para 9(3))). The foreign states which are parties to the Montreal Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 3 Pt II, are: Afghanistan, Algeria, Bahrain, Belarus, Bhutan, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cape Verde, Central African Republic, Chad, People's Republic of China, Comoro Islands, Congo, Democratic Republic of Congo, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Egypt, Equatorial Guinea, Ethiopia, Gabon, Georgia, Guinea, Guinea-Bissau, Honduras, Indonesia, Iran, Japan, Jordan, Kazakhstan, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Laos, Lebanon, Libya, former Yugoslav Republic of Macedonia, Madagascar, Mali, Marshall Islands, Mauritania, Mongolia, Morocco, Myanmar, Nepal, Niger, Oman, Palau, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sudan, Surinam, Syria, Togo, Tunisia, United Arab Emirates, Uzbekistan, Venezuela, Vietnam and Yemen (art 3(a), Sch 3 Pt IA). Estonia and Ukraine are also listed in Sch 3 Pt IA, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 14, 40 ante; and note 11 supra.

The foreign states which are parties to the Montreal Protocol and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 3 Pt II, are: Algeria, Bahrain, Belarus, Bosnia and Herzegovina, Cambodia, Central African Republic, Jordan, Kazakhstan, Republic of Korea, Kuwait, Lebanon, Libya, Mali, Marshall Islands, Myanmar, Oman, Palau, Saudi Arabia, Tajikistan, Togo, Tunisia and United Arab Emirates (art 3(b), Sch 3 Pt IB). Estonia is also listed in Sch 3 Pt IB, but has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 14 ante; and note 11 supra.

With regard to those foreign states which are parties to the Montreal Convention and with which the United Kingdom has extradition treaties in respect of which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Montreal Convention Art 8 paras 1, 4,

and the relevant Orders in Council under the Extradition Act 1870 are to be construed accordingly: Extradition (Aviation Security) Order 1997, SI 1997/1760, art 2(1)(b), (c). 'The offences' are deemed to be included as extraditable offences in any extradition treaty between contracting states: Montreal Convention Art 8 para 1. The offences (as defined in Art 1) equate to offences under the Aviation Security Act 1982 ss 2, 3 (see AIR LAW vol 2 (2008) PARAS 628-629), and include attempts to commit such offences and being an accomplice: see the Montreal Convention Art 1 para 2. Each of the offences is to be treated, for the purposes of extradition, as if it had been committed not only in the place in which it occurred, but also in the places provided for by Art 5 paras 1(b), (c), (d): Art 8 para 4. The foreign states to which the above provisions apply are the same as for the Tokyo Convention (see note 11 *supra*) with the addition of Liberia and the exclusion of Cuba: see the Extradition (Aviation Security) Order 1997, SI 1997/1760, art 2(1)(a), Sch 2 Pt I. With regard to those foreign states which are parties to the Montreal Protocol and with which the United Kingdom has extradition treaties in respect of which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Montreal Convention Art 8 paras 1, 4, and the Orders in Council under the Extradition Act 1870 are to be construed accordingly (Extradition (Aviation Security) Order 1997, SI 1997/1760, art 2(2)(b), (c)), but the offences deemed to be extraditable also include offences which equate to those under the Aviation and Maritime Security Act 1990 s 1. The foreign states to which these provisions apply are: Argentina, Chile, Guatemala, Iraq, Mexico, Monaco, Peru, Russian Federation (see PARA 1158 text and note 62 *ante*), Thailand, United States of America and Yugoslavia: Extradition (Aviation Security) Order 1997, SI 1997/1760, art 2(2)(a), Sch 2 Pt II.

The Extradition (Aviation Security) Order 1997, SI 1997/1760, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 *supra*) (Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 4).

14 See the Extradition Act 1989 s 22(2)(d); the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973 to 31 December 1974; TS 3 (1980); Cmnd 7765) (which entered into force for the United Kingdom on 1 June 1979 (not 24 May 1979, as stated in the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764). The Internationally Protected Persons Convention is set out in the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Internationally Protected Persons Convention, are: (1) an offence mentioned in the Internationally Protected Persons Act 1978 s 1(1)(a) which is committed against a protected person within the meaning of s 1; (2) an offence mentioned in s 1(1)(b) which is committed in connection with such an attack as is so mentioned; and (3) an offence under s 1(3): Extradition Act 1989 s 22(4)(d). The foreign states which are parties to the Internationally Protected Persons Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, art 3, Sch 3 Pt II, are: Armenia, Belarus, Bhutan, Bosnia and Herzegovina, Burundi, People's Republic of China, Democratic Republic of Congo, Costa Rica, Egypt, Gabon, Iran, Japan, Jordan, Kazakhstan, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Mongolia, Nepal, Niger, Oman, Philippines, Rwanda, Sudan, Syria, Togo, Tunisia and Yemen: Sch 3 Pt I. Estonia, Latvia and Ukraine are also listed in Sch 3 Pt I, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 14, 23, 40 *ante*; and note 11 *supra*.

With regard to those foreign states which are parties to the Internationally Protected Persons Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Internationally Protected Persons Convention Art 8 paras 1, 4, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, art 2(2). To the extent that the crimes set forth in the Internationally Protected Persons Convention Art 2 are not listed as extraditable offences in any extradition treaty existing between states parties, they are deemed to be included as such: Art 8 para 1. The crimes in Art 2 equate to offences under the Internationally Protected Persons Act 1978 s 1. For the purposes of extradition, each of the crimes in the Internationally Protected Persons Convention Art 2 is to be treated as if it had been committed not only in the place in which it occurred, but also as provided in Art 3 para 1: Art 8 para 4. The foreign states to which these provisions apply are: Argentina, Chile, Colombia, Ecuador, Guatemala, Haiti, Iraq, Liberia, Mexico, Nicaragua, Panama, Paraguay, Peru, Russian Federation (but see PARA 1158 text and note 60 *ante*), United States of America, Uruguay and Yugoslavia: Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, art 2(1), Sch 2. Romania is also listed in Sch 2, but has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 33 *ante*; and note 11 *supra*.

The Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 *supra*) (Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, Sch 4).

15 See the Extradition Act 1989 s 22(2)(e); the Extradition (Taking of Hostages) Order 1997, SI 1997/1767; and the International Convention against the Taking of Hostages (opened for signature at New York on 18

December 1979; TS 81 (1983); Cmnd 9100) (which entered into force for the United Kingdom on 3 June 1983). The Convention is set out in the Extradition (Taking of Hostages) Order 1997, SI 1997/1767, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Hostages Convention, are any offence under the Taking of Hostages Act 1982: Extradition Act 1989 s 22(4)(e). The foreign states which are parties to the Hostages Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Taking of Hostages) Order 1997, SI 1997/1767, art 3, Sch 3 Pt II, are: Belarus, Bhutan, Bosnia and Herzegovina, Côte d'Ivoire, Egypt, Honduras, Japan, Jordan, Kazakhstan, Republic of Korea, Kuwait, Mali, Mongolia, Nepal, Oman, Philippines, Senegal, Sudan, Surinam, Togo and Venezuela: Sch 3 Pt I. Ukraine is also listed in Sch 3 Pt I, but has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 40 ante; and note 11 supra.

With regard to those foreign states which are parties to the Hostages Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Hostages Convention Art 10 paras 1, 4, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Taking of Hostages) Order 1997, SI 1997/1767, art 2(2). The offences set forth in the Hostages Convention Art 1 are deemed to be included as extraditable offences in any extradition treaty between states party to the Convention: Art 10 para 1. The offences in Art 1 equate to any offence under the Taking of Hostages Act 1982 or an attempt or acting as an accomplice. For the purposes of extradition, the offences are to be treated as if they had been committed not only in the place in which they occurred, but also as provided by the Hostages Convention Art 5 para 1: Art 10 para 4. The foreign states to which these provisions apply are: Argentina, Chile, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Panama, Russian Federation (but see PARA 1158 text and note 60 ante), United States of America and Yugoslavia: Extradition (Taking of Hostages) Order 1997, SI 1997/1767, art 2(1), Sch 2. Romania is also listed in Sch 2, but has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 33 ante; and note 11 supra.

The Extradition (Taking of Hostages) Order 1997, SI 1997/1767, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Taking of Hostages) Order 1997, SI 1997/1767, Sch 4).

16 See the Extradition Act 1989 s 22(2)(f); the Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765; and the Convention on the Physical Protection of Nuclear Material (opened for signature at Vienna and New York on 3 March 1980; TS 61 (1995); Cm 2945) (which entered into force for the United Kingdom on 6 October 1991). The Convention is set out in the Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Nuclear Material Convention, are: (1) an offence mentioned in the Nuclear Material (Offences) Act 1983 s 1(1)(a)-(d) which is committed by doing an act in relation to or by means of nuclear material; and (2) an offence under s 2: Extradition Act 1989 s 22(4)(f) (amended by the Criminal Justice (International Co-operation) Act 1990 ss 22(3), 31(3), Sch 5). The foreign states which are parties to the Nuclear Material Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, art 3, Sch 3, are: People's Republic of China, Indonesia, Japan, Republic of Korea, Mongolia and Philippines: Sch 3 Pt I.

With regard to those foreign states which are parties to the Nuclear Material Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Nuclear Material Convention Art 11 paras 1, 4, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, art 2(2). Offences in the Nuclear Material Convention Art 7 are deemed to be included as extraditable offences in any extradition treaties between states party to the Convention: Art 11 para 1. The offences in Art 7 equate to offences under the Nuclear Material (Offences) Act 1983 ss 1, 2 or an attempt to commit, or participating in, such offences. For the purposes of extradition, each of the offences is to be treated as if it had been committed not only in the place in which it occurred, but also as provided by the Nuclear Material Convention Art 8 para 1: Art 11 para 4. The foreign states to which these provisions apply are: Argentina, Guatemala, Mexico, PARAGUAY, Russian Federation (but see PARA 1158 text and note 60 ante), United States of America and Yugoslavia: Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, art 2(1), Sch 2.

The Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, extends to the Channel Islands and the Isle of Man (art 5(1)) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, Sch 4).

17 See the Extradition Act 1989 s 22(2)(g); the Extradition (Torture) Order 1997, SI 1997/1769; and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 (United Nations Headquarters, New York, 4 February 1985; TS 107 (1991); Cm 1775) (which entered into force for the United Kingdom on 7 January 1989). The Convention is set out in the Extradition (Torture) Order 1997, SI 1997/1769, Sch 1. The Torture Convention

was considered in *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL, where their Lordships incorrectly took the date of the United Kingdom's ratification of the Torture Convention (8 December 1988) as the date when it entered into force for the United Kingdom (7 January 1989).

The relevant offence under the Extradition Act 1989 s 22 (as amended), in relation to the Torture Convention, is torture (an offence in English law under the Criminal Justice Act 1988 s 134: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 160): Extradition Act 1989 s 22(4)(g). The foreign states which are parties to the Torture Convention and with which no extradition treaties under the Extradition Act 1870 s 2 (repealed) are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Torture) Order 1997, SI 1997/1769, art 3, Sch 3 Pt II, are: Afghanistan, Algeria, Armenia, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Burundi, Cambodia, Cape Verde, Chad, People's Republic of China, Democratic Republic of Congo, Costa Rica, Côte d'Ivoire, Egypt, Ethiopia, Georgia, Guinea, Jordan, Republic of Korea, Kuwait, Libya, former Yugoslav Republic of Macedonia, Nepal, Philippines, Senegal, Somalia, Tajikistan, Togo, Tunisia, Uzbekistan, Venezuela and Yemen: Sch 3 Pt I. Estonia, Latvia, Moldova and Ukraine are also listed in Sch 3 Pt I, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 14, 23, 28, 40 ante; and note 11 supra.

With regard to those foreign states which are parties to the Torture Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Torture Convention Art 8 paras 1, 4, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Torture) Order 1997, SI 1997/1769, art 2(2). Torture (or an attempt, complicity or participation in torture: see the Torture Convention Art 4) is deemed to be included in any extradition treaty between states party to the Convention: Art 8(1). For the purposes of extradition, such offences are to be treated as if they had been committed not only in the place in which they occurred but also as provided by Art 5 para 1: Art 8 para 4. The foreign states to which these provisions apply are: Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Russian Federation (but see PARA 1158 text and note 60 ante), United States of America, Uruguay and Yugoslavia: Extradition (Torture) Order 1997, SI 1997/1769, art 2(1), Sch 2. Albania and Romania are also listed in Sch 2, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 6, 33 ante; and note 11 supra.

The Extradition (Torture) Order 1997, SI 1997/1769, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Torture) Order 1997, SI 1997/1769, Sch 4).

18 See the Extradition Act 1989 s 22(2)(h) (added by the Criminal Justice (International Co-operation) Act 1990 s 22(3)); the Extradition (Drug Trafficking) Order 1997, SI 1997/1762; and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (opened for signature at Vienna from 20 December 1988 until 28 February 1989 and subsequently at the United Nations Headquarters, New York, until 20 December 1989; TS 26 (1992); Cm 1927) (which entered into force for the United Kingdom on 26 September 1991). The Convention is set out in the Extradition (Drug Trafficking) Order 1997, SI 1997/1762, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Vienna Convention, are: (1) any drug trafficking offence within the meaning of the Drug Trafficking Act 1994; (2) any offence to which the Criminal Justice (Scotland) Act 1987 relates; and (3) any drug trafficking offence within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588: Extradition Act 1989 s 22(4) (h) (amended by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588, art 38(1), Sch 2). The foreign states which are parties to the Vienna Convention and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Drug Trafficking) Order 1997, SI 1997/1762, art 3, Sch 3 Pt II, are: Afghanistan, Algeria, Armenia, Azerbaijan, Bahrain, Belarus, Bhutan, Bosnia and Herzegovina, Burkina Faso, Burundi, Cape Verde, Chad, People's Republic of China, Democratic Republic of Congo, Costa Rica, Côte d'Ivoire, Dominican Republic, Egypt, Ethiopia, Guinea, Guinea Bissau, Honduras, Iran, Japan, Jordan, Kyrgyzstan, Lebanon, Libya, former Yugoslav Republic of Macedonia, Madagascar, Mali, Mauritania, Myanmar, Nepal, Niger, Oman, Philippines, Qatar, Sao Tome and Principe, Saudi Arabia, Senegal, Sudan, Surinam, Syria, Tajikistan, Togo, Tunisia, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela and Yemen: Sch 3 Pt I. Latvia, Moldova and Ukraine are also listed in Sch 3 Pt I, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 23, 28, 40 ante; and note 11 supra.

With regard to those foreign states which are parties to the Vienna Convention and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Vienna Convention Art 6 para 2, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Drug Trafficking) Order 1997, SI 1997/1762, art 2(2). Each of the offences in the Vienna Convention Art 3 para 1 is deemed to be included as an extraditable offence in any extradition treaty between parties to the Convention: Art 6 para 2. The offences equate to offences under the Drug Trafficking Act 1994 and to incitement, attempt, conspiracy and aiding and abetting in relation to such offences. The foreign states to which these provisions apply are: Argentina, Bolivia, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Monaco, Nicaragua, Panama, Paraguay, Peru, Russian Federation (but see PARA 1158 text and note 60 ante), United States of

America, Uruguay and Yugoslavia: Extradition (Drug Trafficking) Order 1997, SI 1997/1762, art 2(1), Sch 2. Belgium and Romania are also listed in Sch 2, but have since become parties to the European Convention on Extradition 1957: see PARA 1121 text and notes 8, 33 ante; and note 11 supra.

The Extradition (Drug Trafficking) Order 1997, SI 1997/1762, extends to the Channel Islands and the Isle of Man (art 5) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Drug Trafficking) Order 1997, SI 1997/1762, Sch 4).

19 See the Extradition Act 1989 s 22(2)(j), (k) (added by the Aviation and Maritime Security Act 1990 Sch 3 para 9(2)); the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988; TS 64 (1995); Cm 2947) (which entered into force for the United Kingdom on 1 March 1992); and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, supplementary to the Rome Convention (Rome, 10 March 1988; TS 64 (1995); Cm 2947) (which entered into force for the United Kingdom on 1 March 1992). The Rome Convention and the Rome Protocol are set out in the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, Sch 1.

The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Rome Convention, are offences under the Aviation and Maritime Security Act 1990 ss 9, 12 or offences under s 11 or s 13 committed in relation to a ship (within the meaning of Pt II (ss 9-17) (as amended)): Extradition Act 1989 s 22(4)(j) (s 22(4)(j), (k) added by the Aviation and Maritime Security Act 1990 Sch 3 para 9(3)). The relevant offences under the Extradition Act 1989 s 22 (as amended), in relation to the Rome Protocol, are offences under the Aviation and Maritime Security Act 1990 s 10 or offences under s 11 or s 13 committed in relation to a fixed platform (within the meaning of Pt II (as amended)): Extradition Act 1989 s 22(4)(k) (as so added). The foreign states which are parties to the Rome Convention and the Rome Protocol and with which no extradition treaties are in force and to which the Extradition Act 1989 Pt III (as amended) applies, subject to the limitations etc in the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, art 3, Sch 3 Pt II, are: People's Republic of China, Egypt, Lebanon, Marshall Islands and Oman: Sch 3 3 Pts IA, IB. Ukraine is also listed in Sch 3 Pts IA, IB, but has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 40 ante; and note 11 supra.

With regard to those foreign states which are parties to the Rome Convention and the Rome Protocol and with which the United Kingdom has extradition treaties in relation to which Orders in Council under the Extradition Act 1870 s 2 (repealed) are in force, the treaties in question are supplemented by the Rome Convention Art 11 paras 1, 4 and by the Protocol Art 1 para 1, and the Orders in Council under the Extradition Act 1870 are construed accordingly: Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, art 2(1)(b), (c), (2)(b), (c).

'The offences' are deemed to be included as extraditable offences in any extradition treaty between states party to the Rome Convention and Rome Protocol: see the Rome Convention Art 11 para 1; and the Rome Protocol Art 1 para 1. The offences equate to offences under the Aviation and Maritime Security Act 1990 ss 9-13 or attempting or abetting such offences. For the purposes of extradition, the offences are to be treated as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the party requesting extradition: Rome Convention Art 11 para 4. The foreign states to which these provisions apply are: Chile, Liberia, Mexico and the United States of America: Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, art 2(1)(a), (2)(a), Sch 2 Pts I, II. Argentina is listed in Sch 2 Pt I as a party to the Rome Convention and so only offences under the Rome Convention (ie those relating to ships rather than to fixed platforms) are extraditable as between the United Kingdom and Argentina. Romania is listed in the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, Sch 2 Pts I, II (as a party to both the Convention and the Protocol), but it has since become a party to the European Convention on Extradition 1957: see PARA 1121 text and note 33 ante; and note 11 supra.

The Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, extends to the Channel Islands and the Isle of Man (art 4) and to the same United Kingdom territories as the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see note 11 supra) (Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, Sch 4).

20 See the Extradition Act 1989 s 22(2)(l) (added by the United Nations Personnel Act 1997 s 6(2)(a)); and the Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994; Misc 23 (1996); Cm 3363) (which entered into force for the United Kingdom on 15 January 1999). In relation to the United Nations Personnel Convention, the offences in relation to the Extradition Act 1989 s 22 (as amended) are: (1) an offence mentioned in the United Nations Personnel Act 1992 s 1(2) which is committed against a United Nations worker within the meaning of the Act; (2) an offence mentioned in s 2(2) which is committed in connection with such an attack; and (3) an offence under s 3: Extradition Act 1989 s 22(4)(l) (added by the United Nations Personnel Act 1997 s 6(2)(b)).

21 Ie under the Extradition Act 1989 s 8(1)(b): see PARA 1188 post.

22 See the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 3 Pts II, III; the Extradition (Drug Trafficking) Order 1997, SI 1997/1762, Sch 3 Pts II, III; the Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 3 Pts II, III; the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764, Sch 3 Pts II, III; the

Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765, Sch 3 Pts II, III; the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766, Sch 3 Pts II, III; the Extradition (Taking of Hostages) Order 1997, SI 1997/1767, Sch 3 Pts II, III; the Extradition (Tokyo Convention) Order 1997, SI 1997/1768, Sch 3 Pts II, III; and the Extradition (Torture) Order 1997, SI 1997/1769, Sch 3 Pts II, III.

23 Ie an Order in Council such as is mentioned in the Extradition Act 1989 s 22(3): see the text and notes 1-7 *supra*.

24 The court is only relieved of this duty in cases governed by the European Convention on Extradition 1957: see PARA 1121 *et seq ante*.

25 Ibid s 22(5) (amended by the Criminal Justice and Public Order Act 1994 s 158(6)).

26 Ie the Extradition Act 1989 Pt III (as amended). As to the procedure under Pt III (as amended) see PARA 1184 *et seq post*.

27 Ie whether or not by virtue of such an Order in Council: see *ibid* s 22(6).

28 Ie an offence mentioned in *ibid* s 22 (as amended): see note 7 *supra*.

29 Ibid s 22(6). With regard to extradition arrangements governed by Sch 1 (as amended), see the similar provisions in Sch 1 paras 14, 15 (as amended); and PARAS 1199-1200 *post*.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 *et seq*.

1162 Other international conventions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 11-19--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962; SI 1997/1766; SI 1997/1769, all lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(4) INTERNATIONAL TRIBUNALS/1163. Rwanda and former Yugoslavia.

(4) INTERNATIONAL TRIBUNALS

1163. Rwanda and former Yugoslavia.

Arrangements exist to enable the United Kingdom¹ (and Guernsey², the Isle of Man³ and Jersey⁴) to deliver to the International Tribunals for the former Yugoslavia⁵ and for Rwanda⁶ persons accused or convicted of an international tribunal crime⁷, committed respectively in the former Yugoslavia or in Rwanda. The body of each Order in Council implementing such arrangements is in similar terms, and contains provisions relating to: (1) the arrest and delivery of persons to the relevant international tribunal⁸; (2) the discontinuance of proceedings in national courts⁹; (3) other forms of assistance to the relevant international tribunal¹⁰; and (4) administrative and supplementary matters¹¹. The statutes of the relevant international tribunal are also set out in the Orders in Council¹².

1 The arrangements are contained in the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716 (amended by SI 1997/1752; SI 1998/1755) and in the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296 (amended by SI 1997/1751; SI 1998/1755), both made pursuant to the United Nations Act 1946 s 1. See also the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Dependent Territories) Order 1997, SI 1997/1753. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 See the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, made pursuant to the United Nations Act 1946 s 1.

3 See the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282, made pursuant to the United Nations Act 1946 s 1.

4 See the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, made pursuant to the United Nations Act 1946 s 1.

5 The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827 (1993) of the Security Council of the United Nations: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 808; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 463. Yugoslavia no longer exists. The former Yugoslavia is now divided into different states.

6 The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994, established by Resolution 955 (1994) of the Security Council of the United Nations: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 808; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 463.

7 An 'international tribunal crime' is a crime in respect of which the respective International Tribunal has jurisdiction under its Statute: see the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, art 2(1); the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, art 2(1); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, art 2(1); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282, art 2(1); and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, art 2(1).

8 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, Pt I (arts 4-13); the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, Pt I (arts 4-13); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, Pt I (arts 4-12); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order

1997, SI 1997/282, Pt I (arts 4-12); and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, Pt I (arts 4-12).

9 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, Pt II (art 14); the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, Pt II (art 14); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, Pt II (art 13); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282, Pt II (art 13); and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, Pt II (art 13).

10 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, Pt III (arts 15-22) (as amended); the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, Pt III (arts 15-22) (as amended); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, Pt III (arts 14-20, Schedule); the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282, Pt III (arts 14-19); and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, Pt III (arts 14-20, Schedule).

11 See the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, arts 1-3, 23-27; the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, arts 1-3, 23-27; the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997, SI 1997/281, arts 1-3, 21-25; the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, SI 1997/282, arts 1-3, 20-24; and the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997, SI 1997/283, arts 1-3, 21-25.

12 The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is set out in the United Nations (International Tribunal) (Former Yugoslavia) Order 1996, SI 1996/716, Schedule (as amended). The Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994 is set out in the United Nations (International Tribunal) (Rwanda) Order 1996, SI 1996/1296, Schedule (as amended).

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1163 Rwanda and former Yugoslavia

NOTE 1--SI 1996/716 further amended: SI 2000/1342, SI 2000/3243, SI 2001/412, SI 2001/2563, SI 2005/617, SI 2006/1923. SI 1996/1296 further amended: SI 2000/1342, SI 2000/3243, SI 2001/412, SI 2001/3920, SI 2005/617, SI 2006/1923, SI 2009/2054.

NOTE 7--SI 1996/716 art 2(1) and SI 1996/1296 art 2(1) amended: SI 2000/1342.

NOTE 8--SI 1996/716 art 7 and SI 1996/1296 art 7 amended: SI 2000/3243. SI 1996/716 arts 12, 13 and SI 1996/1296 arts 11-13 substituted: SI 2001/412.

NOTE 9--SI 1996/1296 art 14 amended: SI 2000/3243. SI 1996/716 art 14 substituted: SI 2001/412.

NOTE 10--SI 1996/716 art 16 and SI 1996/1296 art 16 amended: SI 2005/3389. SI 1996/1296 arts 17A-17E added, art 20 amended: SI 2001/3920.

NOTE 11--SI 1996/1296 art 27 amended: SI 2001/3920.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/2. EXTRADITION ARRANGEMENTS AND TREATIES/(4) INTERNATIONAL TRIBUNALS/1164. The International Criminal Court.

1164. The International Criminal Court.

On 17 July 1998, the Rome Statute of the International Criminal Court was adopted at the United Nations Diplomatic Conference of the Plenipotentiaries on the Establishment of an International Criminal Court¹. At the date at which this volume states the law, the International Criminal Court is not yet established. However, once established, it is intended to be permanent and will have power to exercise its jurisdiction over persons for the most serious crimes of international concern and will be complementary to national criminal jurisdictions². The International Criminal Court will have jurisdiction with respect to: (1) genocide³; (2) crimes against humanity⁴; (3) war crimes⁵; and (4) the crime of aggression⁶. A state party which receives a request for arrest and surrender to the International Criminal Court is to take immediate steps to arrest the person sought in accordance with its laws and the provisions of Part 9 of the Rome Statute of the International Criminal Court⁷. The United Kingdom⁸ has not yet adopted provisions to enable arrest and surrender to the International Criminal Court.

1 See the Rome Statute of the International Criminal Court (17.7.98) (UN Doc A/CONF. 183/9; 37 ILM (1998), 999), which makes provision as to: the establishment of the International Criminal Court (see Pt 1 (arts 1-4)); jurisdiction, admissibility and applicable law (see Pt 2 (arts 5-21)); general principles of criminal law (see Pt 3 (arts 22-33)); the composition and administration of the court (see Pt 4 (arts 34-52)); investigation and prosecution (see Pt 5 (arts 53-61)); the trial (see Pt 6 (arts 62-76)); penalties (see Pt 7 (arts 77-80)); appeal and revision (see Pt 8 (arts 81-85)); international co-operation and judicial assistance (see Pt 9 (arts 86-102)); enforcement (see Pt 10 (arts 103-111)); assembly of states parties (see Pt 11 (art 112)); financing (see Pt 12 (arts 113-118)); and administrative and supplementary matters (see Pt 13 (arts 119-128)).

2 Ibid arts 1, 5.

3 Ibid arts 5(1)(a), 6.

4 Ibid arts 5(1)(b), 7.

5 Ibid arts 5(1)(c), 8. This is subject to limited opt-out: see art 124.

6 Ibid art 5(1)(d). This is once the definition of aggression and conditions for jurisdiction are agreed.

7 Ibid art 59. Part 9 (arts 86-102) is concerned with international co-operation and judicial assistance.

8 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1120-1164 Extradition Arrangements and Treaties

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1164 The International Criminal Court

TEXT AND NOTES--The International Criminal Court Act 2001 gives effect to the Statute of the International Criminal Court. See further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 438 et seq.

TEXT AND NOTE 6--The crime of aggression is excluded from the crimes over which the International Criminal Court has jurisdiction: see *ibid* s 1(1); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 438 note 3.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1165. Application of Part III of the Extradition Act 1989.

3.

(1) PERSONS LIABLE TO EXTRADITION

1165. Application of Part III of the Extradition Act 1989.

The scheme of extradition provided for in the provisions relating to extradition procedures under Part III of the Extradition Act 1989¹ applies also to crimes committed before the Act came into force².

¹ See the Extradition Act 1989 Pt III (ss 7-17) (as amended).

² *R v Secretary of State for the Home Department, ex p Hill* [1999] QB 886, [1997] 2 All ER 638, DC. As to the coming into force of the Extradition Act 1989 see PARA 1103 note 1 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1166. Commonwealth countries, colonies and Hong Kong.

1166. Commonwealth countries, colonies and Hong Kong.

Subject to the provisions of the Extradition Act 1989, a person¹ in the United Kingdom² who is accused³ of an extradition crime⁴ in a designated Commonwealth country⁵, or in a colony or who is alleged to be unlawfully at large after conviction⁶ of such an offence in any such country or in a colony, may be arrested and returned to that country or colony in accordance with extradition procedures under Part III of the Extradition Act 1989⁷.

Subject to the provisions of the Extradition Act 1989, a person in the United Kingdom who is accused in the Hong Kong Special Administrative Region⁸ of an extradition crime, or is alleged to be unlawfully at large after conviction for such an offence in that Region, may be arrested and returned to that Region in accordance with extradition procedures under Part III of the Extradition Act 1989⁹.

1 Properly accredited diplomats are immune from extradition proceedings: see the Diplomatic Privileges Act 1964; *R v Governor of Pentonville Prison, ex p Teja* [1971] 2 QB 274, [1971] 2 All ER 11, DC; *R v Governor of Pentonville Prison, ex p Osman (No 2)* (21 December 1988) Lexis, Enggen Library, Cases File, (1988) Times, 24 December, DC; and PARA 1196 note 1 post. As to the protection afforded by state immunity see *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. In proceedings under the Extradition Act 1989, the magistrate hearing an application for committal has no power to refuse to commit the fugitive on the ground that the proceedings might be an abuse of process, including whether the fugitive's presence in the jurisdiction was brought about by deception, but must commit him if the requirements of s 9(8) (as amended) (see PARA 1190 post) are satisfied, and the High Court has no jurisdiction to intervene in the proceedings but only such discretion as is conferred on it by s 11(3) (see PARA 1183 post), the safeguard for the fugitive in the case of an alleged abuse of power being the general discretion of the Secretary of State under s 12(1) (see PARA 1193 post) as to the making of the order for return: *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL; *Atkinson v United States of America Government* [1971] AC 197, HL; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. As to the role of the magistrate see PARA 1115 ante. As to the Secretary of State see PARA 1116 ante.

3 For the purposes of the Extradition Act 1989, a person convicted in his absence in a designated Commonwealth country or a colony is treated as a person accused of the offence of which he is convicted: s 35(2); and see PARA 1179 post. For the meaning of 'designated Commonwealth country' see PARA 1120 ante. For the meaning of 'colony' see PARA 1106 note 6 ante.

Although in general the act of the requesting state in laying charges is to be regarded as a once and for all event, for the complainant who asserts the truth of the charge, an accusation is a continuing event, such that an accusation originally made in good faith may turn to bad faith, if the complainant decides to use the charge not to secure justice but to exact blackmail: *Re Calis* (19 November 1993) Lexis, Enggen Library, Cases File, DC.

4 For the meaning of 'extradition crime' for these purposes see PARAS 1172-1173 post.

5 As to the procedure for designation see the Extradition Act 1989 s 5; and PARA 1167 post. As to the countries which have been designated under s 5 see PARA 1120 ante. A former member of the Commonwealth whose membership has lapsed may remain a designated Commonwealth country within the meaning of s 5(1) (see PARA 1163 post) where there has been no Order in Council removing that country from the list in the British Nationality Act 1981 Sch 3 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11), nor an amendment to the original designation order. There is no requirement in the Extradition Act 1989 s 5(1) that the country be a member for the time being of the Commonwealth: see *R v Governor of Brixton Prison, ex p Kahan* [1989] QB 716, [1989] 2 All ER 368 (concerning Fiji).

6 See *Re Barone* (7 November 1997, unreported), DC.

7 Extradition Act 1989 s 1(2). There is no power to arrest a person falling under s 1(2) otherwise than in accordance with the Act: cf *Diamond v Minter* [1941] 1 KB 656, [1941] 1 All ER 390. The extradition procedures referred to are those under the Extradition Act 1989 Pt III (ss 7-17) (as amended). For the meaning of 'colony' see PARA 1106 note 6 ante.

8 'Hong Kong Special Administrative Region' means the Hong Kong Special Administrative Region of the People's Republic of China: *ibid* s 35(1) (added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 15). See also PARA 1157 ante.

9 Extradition Act 1989 s 1(2A) (added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 1).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1167. Procedure for designation.

1167. Procedure for designation.

Her Majesty may by Order in Council¹ designate for certain purposes² any country for the time being mentioned in the British Nationality Act 1981³ (countries whose citizens are Commonwealth citizens) as a designated Commonwealth country⁴. The Extradition Act 1989 has effect in relation to all colonies⁵. Her Majesty may by Order in Council direct that the Extradition Act 1989 is to have effect in relation to the return of persons to, or in relation to persons returned from, any designated Commonwealth country or any colony subject to such exceptions, adaptations or modifications as may be specified in the Order⁶.

1 At the date at which this volume states the law the Extradition (Designated Commonwealth Countries) Order 1991, SI 1991/1700 (as amended) had been made. Any Order may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient: Extradition Act 1989 s 5(4). For the purposes of any Order in Council under s 5(1) (see the text to note 4 infra), any territory for the external relations of which a Commonwealth country is responsible may be treated as part of that country or, if the government of that country so requests as a separate country: s 5(5). Any Order in Council under s 5, other than an Order to which s 5(7) (see note 6 infra) applies, is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(6).

2 Ie the purposes of ibid s 1(2) (see PARA 1166 ante): see s 5(1).

3 Ie the British Nationality Act 1981 s 37, Sch 3 (as amended) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11).

4 Extradition Act 1989 ss 5(1), 35(1). For the meaning of 'designated Commonwealth country' see PARA 1120 ante. See also PARA 1166 note 5 ante.

5 Ibid s 5(2). For the meaning of 'colony' see PARA 1106 note 6 ante. See also PARAS 1270-1271 post.

6 Ibid s 5(3). See note 1 supra. No recommendation may be made to Her Majesty in Council to make an Order containing any such direction as is authorised by s 5(3) unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament: s 5(7).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1168. Foreign states.

1168. Foreign states.

Where extradition procedures under Part III of the Extradition Act 1989¹ are available² as between the United Kingdom³ and a foreign state⁴, a person⁵ in the United Kingdom who is accused⁶ in that state of the commission of an extradition crime⁷, or is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state, may be arrested and returned to that state in accordance with those procedures⁸.

1 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

2 Extradition arrangements may be 'general extradition arrangements' or 'special extradition arrangements': see *ibid* s 3(3); and PARA 1169 post. As to the foreign states to which Pt III (as amended) applies see PARAS 1120 et seq, 1156 ante.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. As to application to the Channel Islands and the Isle of Man see *ibid* s 29; and PARA 1103 ante.

4 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

5 See PARA 1166 note 1 ante.

6 The House of Lords, although expressly not offering a comprehensive definition because of the variety of foreign criminal systems, have held that the following approach ought to be adopted in determining whether an individual is a person 'accused'. Mere suspicion that an individual has committed offences is insufficient to make him a person accused. However, the meaning of 'accused' has to be determined from its context and as a matter of substance rather than form. Extradition treaties and statutes ought to be given a broad, generous and purposive interpretation so that the United Kingdom courts can accommodate the differences between legal systems: *Re Ismail* [1999] 1 AC 320, [1998] 3 All ER 1007, HL. See also *Re Debs* (6 March 1998) Lexis, Enggen Library, Cases File, DC.

7 For the meaning of 'extradition crime' for these purposes see PARAS 1172-1173 post.

8 Extradition Act 1989 s 1(1).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1169. Arrangements for availability of procedure under Part III of the Extradition Act 1989.

1169. Arrangements for availability of procedure under Part III of the Extradition Act 1989.

'Extradition arrangements' means arrangements made with a foreign state¹ under which extradition procedures under Part III of the Extradition Act 1989² are available as between the United Kingdom³ and that state⁴. Extradition arrangements may be: (1) arrangements of a general nature made with one or more states and relating to the operation of extradition procedures under Part III ('general extradition arrangements')⁵; or (2) arrangements relating to the operation of those procedures in particular cases ('special extradition arrangements') made with a state with which there are no general extradition arrangements⁶.

1 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

2 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 Extradition Act 1989 ss 3(1), 35(1).

5 Ibid ss 3(3)(a), 35(1).

6 Ibid ss 3(3)(b), 35(1).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1170. Orders in Council as to extradition.

1170. Orders in Council as to extradition.

Where general extradition arrangements¹ have been made, Her Majesty may, by Order in Council² reciting or embodying their terms, direct that the Extradition Act 1989, so far as it relates to extradition procedures under Part III of the Extradition Act 1989³, applies as between the United Kingdom⁴ and the foreign state⁵, or any foreign state, with which they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order⁶. An Order in Council is conclusive evidence that the arrangements therein referred to comply with the Extradition Act 1989 and that this Act, so far as it relates to extradition procedures under Part III, applies in the case of the foreign state, or any foreign state, mentioned in the Order⁷. An Order in Council which does not provide that a person may only be returned to the foreign state requesting his return if the court of committal⁸ is satisfied that the evidence would be sufficient to make a case requiring an answer by that person⁹ if the proceedings were a summary trial of an information against him and the extradition crime¹⁰ had taken place within the jurisdiction of the court is subject to annulment in pursuance of a resolution of either House of Parliament¹¹.

1 For the meaning of 'general extradition arrangements' see PARA 1169 text to note 5 ante.

2 As to Orders made under the Extradition Act 1989 s 4 (as amended) see PARAS 1121, 1156, 1162 ante. Such an Order in Council may not be made unless the general extradition arrangements to which it relates provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice, and are in conformity with the provisions of the Extradition Act 1989, and in particular with the restrictions on return contained in Pt II (s 6) (as amended) (see PARA 1174 post): s 4(2). An Order in Council must be laid before Parliament after being made: s 4(4).

3 Ie *ibid* Pt III (ss 7-17) (as amended).

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

6 Extradition Act 1989 s 4(1).

7 *Ibid* s 4(3).

8 As to proceedings for committal see *ibid* s 9 (as amended); and PARA 1190 post.

9 For the purposes of the application of the Extradition Act 1989 by virtue of any Order in Council in force under it or the Extradition Act 1870 s 2 (repealed) (see PARA 1158 ante), any reference in the Extradition Act 1989 to evidence making a case requiring an answer by an accused person is to be taken to indicate a determination of the same question as is indicated by a reference (however expressed) in any such Order (or arrangements embodied or recited in it) to evidence warranting or justifying the committal for trial of an accused person: s 35(3) (added by the Criminal Justice and Public Order Act 1994 s 158(7)).

10 For the meaning of 'extradition crime' for these purposes see PARAS 1172-1173 post.

11 Extradition Act 1989 s 4(5) (amended by the Criminal Justice and Public Order Act 1994 s 158(1), (2)).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1170 Orders in Council as to extradition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1171. Special extradition arrangements.

1171. Special extradition arrangements.

Where special extradition arrangements¹ have been made in respect of a person, extradition procedures must be available in the case of that person, as between the United Kingdom² and the foreign state³ with which the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements⁴. If the Secretary of State⁵ issues a certificate of special extradition arrangements⁶, it is conclusive evidence of all matters stated in it⁷.

1 For the meaning of 'special extradition arrangements' see PARA 1169 text to note 6 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

4 Extradition Act 1989 s 15(1).

5 As to the Secretary of State see PARA 1116 ante.

6 'Certificate of special extradition arrangements' means a certificate that special extradition arrangements have been made in respect of a person as between the United Kingdom and a foreign state specified in the certificate, and that extradition procedures are available in the case of that person as between the United Kingdom and the foreign state to the extent specified in the certificate: Extradition Act 1989 s 15(3).

7 Ibid s 15(2).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1172. Conduct in the territory of the requesting state.

(2) EXTRADITION CRIMES

1172. Conduct in the territory of the requesting state.

'Extradition crime' is defined in part as conduct in the territory¹ of a foreign state², a designated Commonwealth country³, a colony⁴ or the Hong Kong Special Administrative Region⁵, which, if it occurred in the United Kingdom, would constitute an offence⁶ punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state⁷, Commonwealth country or colony or of the Hong Kong Special Administrative Region, is so punishable under that law⁸.

1 For the purposes of general extradition procedures under the Extradition Act 1989 Pt III (ss 7-17) (as amended), in their application (whether or not by virtue of an Order in Council) as between the United Kingdom and any other state, any act or omission, wherever it takes place, which constitutes an offence mentioned in s 22 (as amended) (extension of purposes of extradition for offences under Acts giving effect to international conventions) (see PARAS 1161-1162 ante), and an offence against the law of that state, is deemed to be an offence committed within the territory of that state: s 22(6). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. For an example of how s 2(1)(a) (as amended) applies where the alleged conduct of the person whose extradition is sought allegedly occurred in the United Kingdom albeit as part of an alleged conspiracy which took place in the requesting state see *R v Bow Street Magistrates' Court, ex p Raccagni* (17 December 1998) Lexis, Enggen Library, Cases File, DC.

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

3 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

4 For the meaning of 'colony' see PARA 1106 note 6 ante.

5 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

For the purposes of the Extradition Act 1989, except s 1(3), Sch 1 (as amended): (1) conduct in a colony or dependency of a foreign state or of a designated Commonwealth country, or a vessel, aircraft or hovercraft of a foreign state or of such a country, is to be treated as if it were conduct in the territory of that state or country; (2) conduct in a vessel, aircraft or hovercraft of a colony of the United Kingdom is to be treated as if it were conduct in that colony; and (3) conduct in a vessel, aircraft or hovercraft of the Hong Kong Special Administrative Region is to be treated as if it were conduct in that Region: s 2(4) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 37(2); and the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 2(1), (4)).

6 The relevant date for determining whether the rule of double criminality is satisfied is the date of the conduct, not the date of the request for extradition: *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening)* (No 3) [1999] 2 All ER 97, [1999] 2 WLR 827.

7 For the purposes of the Extradition Act 1989, except Sch 1 (as amended): (1) the law of a foreign state, designated Commonwealth country or colony includes the law of any part of it and the law of the United Kingdom includes the law of any part of the United Kingdom; and (2) reference must be made to the law of the colony or dependency of a foreign state or of a designated Commonwealth country, and not (where different) to the law of the foreign state or Commonwealth country, to determine the level of punishment applicable to conduct in that colony or dependency: s 2(4) (as amended: see note 5 supra).

8 Ibid s 2(1)(a) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 2(1), (2) (a)). It is not an objection to any proceedings against a person under the Extradition Act 1989 in respect of an offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he is convicted he could not have been punished for it: see s 23(2); and PARA 1178 post. As to the offence of genocide see the Genocide Act 1969 s 1(1); para 1160 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1172 Conduct in the territory of the requesting state

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1173. Conduct outside the territory of the requesting state.

1173. Conduct outside the territory of the requesting state.

'Extradition crime' is further defined¹ as an extra-territorial offence² against the law of a foreign state³, designated Commonwealth country⁴ or colony⁵, or of the Hong Kong Special Administrative Region⁶, which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies⁷: (1) the condition that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom⁸ punishable with imprisonment for a term of 12 months, or any greater punishment⁹; or (2) the following conditions¹⁰: (a) that the foreign state, Commonwealth country or colony or the Hong Kong Special Administrative Region bases its jurisdiction on the nationality of the offender¹¹; (b) that the conduct constituting the offence occurred outside the United Kingdom¹²; and (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment¹³.

1 For the meaning of 'extradition crime' already set out see PARA 1172 ante.

2 This expression is not defined for the purposes of the Extradition Act 1989. In a case decided under the Fugitive Offenders Act 1967, the Divisional Court held that an extra-territorial crime was one where every element of the crime took place outside the territory of the relevant state: *Re Reyat's Application for a Writ of Habeas Corpus* (22 March 1989) Lexis, Enggen Library, Cases File, DC.

3 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

4 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

5 For the meaning of 'colony' see PARA 1106 note 6 ante.

6 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

7 Extradition Act 1989 s 2(1)(b) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 2(1), (2)(b)).

8 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

9 Extradition Act 1989 s 2(1)(b)(i), (2). As to the principles of transposition of conduct see *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701, [1990] 1 WLR 277, DC; *R v Governor of Pentonville Prison, ex p Tarling* (1978) 70 Cr App Rep 77, HL (both decided under the Fugitive Offenders Act 1967).

10 Extradition Act 1989 s 2(1)(b)(ii).

11 Ibid s 2(1)(b)(ii), (3)(a) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 2(1), (3)).

12 Extradition Act 1989 s 2(1)(b)(ii), (3)(b).

13 Ibid s 2(1)(b)(ii), (3)(c).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(i) Offences of a Political Character etc/A. SCOPE OF THE RESTRICTION/1174. Offences of a political character, race, religion, nationality and political opinions.

(3) RESTRICTIONS ON RETURN

(i) Offences of a Political Character etc

A. SCOPE OF THE RESTRICTION

1174. Offences of a political character, race, religion, nationality and political opinions.

A person may not be returned under the extradition procedures under Part III of the Extradition Act 1989¹, or committed or kept in custody for the purposes of return if it appears to an appropriate authority²:

- 22 (1) that the offence of which that person is accused or is convicted is an offence of a political character³;
- 23 (2) that it is an offence under military law which is not also an offence under the general criminal law⁴;
- 24 (3) that the request for his return (though purporting to be made on account of an extradition crime⁵) is in fact made for the purpose of prosecuting or punishing him on account of his race⁶, religion, nationality or political opinions⁷; or
- 25 (4) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions⁸.

1 *Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).*

2 *Ibid* s 6(1). 'Appropriate authority' means the Secretary of State, the court of committal, the High Court or High Court of Justiciary on an application for habeas corpus or for review of the order of committal: ss 6(9), 35(1). As to the Secretary of State see *PARA 1116 ante*. As to proceedings for committal see s 9 (as amended); and *PARA 1190 post*. 'High Court' means in relation to England and Wales, Her Majesty's High Court of Justice in England, and in relation to Northern Ireland, Her Majesty's High Court of Justice in Northern Ireland: Interpretation Act 1978 s 5, Sch 1; and see *COURTS*. As to an application for habeas corpus see the Extradition Act 1989 s 11; and *PARA 1183 post*.

3 *Ibid* s 6(1)(a). As to the meaning of 'political character' for the purposes of Pt III (as amended) and s 1(3), Sch 1 (as amended) see *PARAS 1175-1178 post*.

4 *Ibid* s 6(1)(b).

5 For the meaning of 'extradition crime' for these purposes see *PARAS 1172-1173 ante*.

6 For the purposes of the Extradition Act 1989 s 6 (as amended), in relation to Commonwealth countries and colonies, 'race' includes tribe: s 6(10). For the meaning of 'colony' see *PARA 1106 note 6 ante*.

7 *Ibid* s 6(1)(c). It has been held, dealing with the corresponding provision in the Fugitive Offenders Act 1967, that it was not necessary for the applicant to prove on the balance of probabilities that he would be prosecuted, punished, restricted or prejudiced for the impermissible reasons: *Fernandez v Government of Singapore* [1971] 2 All ER 691 at 696, [1971] 1 WLR 987 at 994, HL, per Lord Diplock. This approach was followed in *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December, DC. A person cannot be said to be liable for prosecution for his political opinions when he has never expressed

political views, even though he is the centre of a political controversy: *R v Governor of Pentonville Prison, ex p Teja* [1971] 2 QB 274, [1971] 2 All ER 11.

8 Extradition Act 1989 s 6(1)(d).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(i) Offences of a Political Character etc/B. POLITICAL CRIMES/1175. Political crimes.

B. POLITICAL CRIMES

1175. Political crimes.

A fugitive criminal will not be surrendered if the offence in respect of which his surrender is demanded is one of a political character. There is no statutory definition of an 'offence of a political character' and the courts have consistently avoided any exhaustive definition¹. The crime must be incidental to and form a part of a political upheaval, committed by the fugitive offender as part of an organised political party contending for power with the established government². The crime must connote opposition to the government of the requesting country on some issue connected with the political control or government of that, and no other, country³. The fact that the fugitive offender's crime has become the subject of political controversy will not convert an extradition crime into an offence of a political character⁴. A person seeking political asylum in the United Kingdom, in circumstances which would be regarded as treason by the law of the requesting country, is also protected from extradition⁵.

An offence may be of a political character either because the wrongdoer had some direct ulterior motive of a political kind, or because the requesting state is anxious to obtain the wrongdoer in order to punish him for his politics⁶. There are statutory limitations on the definition of political character⁷.

1 *Re Castioni* [1891] 1 QB 149; *Schtraks v Government of Israel* [1964] AC 556 at 589, [1962] 3 All ER 529 at 538-539, HL, per Viscount Radcliffe; *Re Gross, ex p Treasury Solicitor* [1968] 3 All ER 804, sub nom *Re Extradition Act 1870, ex p Treasury Solicitor* [1969] 1 WLR 12, DC. Nor is there any single internationally accepted definition of 'political offence': 847 HC Official Report (5th series), 4 December 1972, written answers col 303. However, the cases do reveal that certain principles can be applied when determining whether an offence is political: 'political' in this context is analogous with 'political' in such phrases as 'political refugee', 'political asylum' and 'political prisoner': *Schtraks v Government of Israel* supra at 591 and 540 per Viscount Radcliffe. As to the meaning and significance of the phrase 'an offence of a political character' see *Cheng v Governor of Pentonville Prison* [1973] AC 931 at 944, [1973] 2 All ER 204 at 208, HL, per Lord Diplock; *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 3 All ER 208 at 212-214, [1975] 1 WLR 893 at 897-898, DC, per Lord Widgery CJ (the fact that the applicant was to be tried by a special court was not sufficient to bring him within the exception); *R v Governor of Pentonville Prison, ex p Rebott* [1978] LS Gaz R 43, CA (acts of international espionage not offences of political character); *R v Governor of Pentonville Prison, ex p Budlong* [1980] 1 All ER 701, [1980] 1 WLR 1110, DC (burglaries not political because not carried out to challenge political control of the government of the requesting state); *Ferrandi v Governor of Brixton Prison and the Government of Italy* (22 June 1981, unreported) (offences of murder, arson and robbery not brought within the exception); *R v Governor of Pentonville Prison, ex p Rodriguez* (15 November 1984) Lexis, Enggen Library, Cases File, (1984) Times, 29 November, DC; *Re Bruchhausen* (18 March 1986) Lexis, Enggen Library, Cases File (offences relating to passing sensitive technology to the Soviet Union not within the exception). The purpose of the restriction is twofold: (1) to avoid involving the United Kingdom in the internal political conflicts of foreign states; and (2) the humanitarian purpose of preventing the offender being surrendered to a jurisdiction in which there was a risk that his trial or punishment might be unfairly influenced by political considerations: *Cheng v Governor of Pentonville Prison* supra at 946 and 209 per Lord Diplock.

2 *Re Castioni* [1891] 1 QB 149 at 165-166; *Re Meunier* [1894] 2 QB 415, DC. But there does not need to be evidence of any violent disturbance or struggle between the contending parties: see *Re Meunier* supra at 419 per Cave J; *Schtraks v Government of Israel* [1964] AC 556 at 583, [1962] 3 All ER 529 at 535, HL, per Lord Reid; *Re Gross, ex p Treasury Solicitor* [1968] 3 All ER 804 at 808-809, sub nom *Re Extradition Act 1870, ex p Treasury Solicitor* [1964] 1 WLR 12 at 16-18, DC, per Chapman J (trial of SS officers for murder of concentration camp inmates: offence held not to be of political character). There must be some form of political opposition between the accused and the requesting state, so that the murder of a member of a rival political faction cannot fall within the exception: *Kakis v Government of the Republic of Cyprus* (16 December 1977, unreported).

3 *Cheng v Governor of Pentonville Prison* [1973] AC 931, [1973] 2 All ER 204, HL, in which it was held that political action taken in the requesting country but directed against the government of a third country cannot be an offence of a political character; although it is submitted that the dissenting judgment of Lord Simon of Glaisdale, with which Lord Wilberforce agreed, is forceful. See also *R v Governor of Belmarsh Prison, ex p Dunlayici* (1996) Times, 2 August, DC.

4 *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL.

5 See *R v Governor of Brixton Prison, ex p Kolczynski* [1955] 1 QB 540 at 547, [1955] 1 All ER 31 at 34, DC, per Cassels J; *Schtraks v Government of Israel* [1964] AC 556 at 581, [1962] 3 All ER 529 at 533-534, HL, per Lord Reid.

6 *Cheng v Governor of Pentonville Prison* [1973] AC 931 at 944, [1973] 2 All ER 204 at 208, HL, per Lord Diplock, and at 960 and 222 per Lord Salmon; *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL; *R v Governor of Winson Green Prison, ex p Littlejohn* [1975] 3 All ER 208, [1975] 1 WLR 893, DC.

7 See PARAS 1176-1178 post.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(i) Offences of a Political Character etc/C. LIMITATIONS ON POLITICAL CHARACTER EXCEPTION/1176. Suppression of terrorism.

C. LIMITATIONS ON POLITICAL CHARACTER EXCEPTION

1176. Suppression of terrorism.

For the purposes of (1) a request for the return of a person in accordance with extradition procedures¹ made by one of certain countries²; and (2) a requisition³ which is made by such a country⁴, no offence to which the provisions of the Suppression of Terrorism Act 1978⁵ apply may be regarded as an offence of a political character⁶, and no proceedings in respect of an offence to which those provisions apply may be regarded as a criminal matter of a political character or as criminal proceedings of a political character⁷.

1 Ie under the Extradition Act 1989 Pt III (ss 7-17) (as amended).

2 Ibid s 24(2)(a). Section 24(2) applies to a country for the time being designated in an order made by the Secretary of State as a party to the European Convention on the Suppression of Terrorism (Strasbourg, 27 January 1977; TS 93 (1978); Cmnd 7390), and to a country in relation to which the Secretary of State has made an order under the Suppression of Terrorism Act 1978 s 5 (as amended) (see PARA 1161 ante) applying the Extradition Act 1989 s 24(2): s 24(3). As to countries designated as parties to the European Convention on the Suppression of Terrorism see the Suppression of Terrorism Act 1978 s 8; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1063. As to the Secretary of State see PARA 1116 ante.

3 Ie under the Extradition Act 1989 s 1(3), Sch 1 (as amended).

4 Ibid s 24(2)(b).

5 Ie the Suppression of Terrorism Act 1978 s 1 (as amended) (see PARA 1295 post).

6 Extradition Act 1989 s 24(1)(a). As to political crimes see PARA 1175 ante.

7 Ibid s 24(1)(b). For an example of the application of s 24 see *Re Kexel and Tillman* (10 April 1984) Lexis, Enggen Library, Cases File, DC. See further PARA 1161 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(i) Offences of a Political Character etc/C. LIMITATIONS ON POLITICAL CHARACTER EXCEPTION/1177. Offences against the Head of the Commonwealth.

1177. Offences against the Head of the Commonwealth.

In relation to a Commonwealth country or a colony¹ an offence of a political character² does not include an offence against the life or person of the Head of the Commonwealth³ or attempting or conspiring to commit, or assisting, counselling or procuring the commission of or being accessory before or after the fact to such an offence, or of impeding the apprehension or prosecution or persons guilty of such an offence⁴.

1 For the meaning of 'colony' see PARA 1106 note 6 ante.

2 See the reference in the Extradition Act 1989 s 6(1) to an offence of a political character; and PARA 1174 ante. As to political crimes see PARA 1175 ante.

3 I.e the Sovereign: cf the Royal Titles Act 1953, preamble; and COMMONWEALTH vol 13 (2009) PARAS 713, 716.

4 Extradition Act 1989 s 6(8).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(i) Offences of a Political Character etc/C. LIMITATIONS ON POLITICAL CHARACTER EXCEPTION/1178. Genocide.

1178. Genocide.

For the purposes of the Extradition Act 1989, no offence which, if committed in the United Kingdom¹, would be punishable as an offence of genocide² or as an attempt, conspiracy or incitement to commit such an offence may be regarded as an offence of a political character³, and no proceedings in respect of such an offence may be regarded as a criminal matter of a political character⁴. It is not an objection to any proceedings against a person under the Extradition Act 1989 in respect of an offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he was convicted he could not have been punished for it⁵.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 As to the offence of genocide see the Genocide Act 1969 s 1(1); para 1160 ante.

3 As to political crimes see PARA 1175 ante.

4 Extradition Act 1989 s 23(1).

5 Ibid s 23(2).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(ii) Other Restrictions on Return/1179. Convictions obtained in absence.

(ii) Other Restrictions on Return

1179. Convictions obtained in absence.

A person who is alleged to be unlawfully at large after conviction of an extradition crime¹ must not be returned to a foreign state² or to the Hong Kong Special Administrative Region³, or committed or kept in custody for the purposes of return to a foreign state or to that Region, if it appears to an appropriate authority⁴ that the conviction was obtained in his absence⁵, and that it would not be in the interests of justice to return him on the ground of that conviction⁶. A person convicted in his absence in a designated Commonwealth country⁷ or a colony⁸ is to be treated as a person accused of the offence of which he is convicted⁹.

1 For the meaning of 'extradition crime' for these purposes see PARAS 1172-1173 ante.

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

3 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

4 Extradition Act 1989 s 6(2). For the meaning of 'appropriate authority' see PARA 1174 note 2 ante.

5 Ibid s 6(2)(a).

6 Ibid s 6(2)(b). See *Re Cavallo* (13 March 1997) Lexis, Enggen Library, Cases File, DC (where the Italian government did not establish that the person sought had been convicted and was at large); *Re Barone* (7 November 1997, unreported), DC (where the court held that it would not be in the interests of justice to return a person whose extradition is sought who had been convicted of murder in his absence on the basis of evidence that made his conviction unsafe, when the requesting state had made it plain that the trial could not be reopened on return). See also *Peci v Governor of Brixton Prison* (2000) Times, 12 January, DC (in the absence of bad faith, the foreign state's unequivocal guarantee that a retrial will be ordered on extradition should be accepted).

7 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

8 For the meaning of 'colony' see PARA 1106 note 6 ante.

9 Extradition Act 1989 s 35(2).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(ii) Other Restrictions on Return/1180. Autrefois acquit and convict.

1180. Autrefois acquit and convict.

A person accused of an offence must not be returned, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority¹ that if charged with that offence in the United Kingdom² he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction³.

1 For the meaning of 'appropriate authority' see PARA 1174 note 2 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Extradition Act 1989 s 6(3). As to the principles of autrefois acquit and convict see *Connelly v DPP* [1964] AC 1254, [1964] 2 All ER 401, HL; *DPP v Nasralla* [1967] 2 AC 238, [1967] 2 All ER 161, PC. An acquittal of a court of competent jurisdiction outside England is a bar to indictment in England: *R v Roche* (1775) 1 Leach 134; *R v Aught* (1918) 13 Cr App Rep 101. It has been held that discharge in committal proceedings for insufficiency of evidence does not prevent a second committal proceeding: *Re Rees* [1986] AC 937 at 962, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321 at 332, HL, per Lord Mackay of Clashfern (decided under the Extradition Act 1870). For an unsuccessful attempt to utilise this provision see *Re Da Villa* (15 April 1994) Lexis, Enggen Library, Cases File, DC.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1180 Autrefois acquit and convict

NOTE 3--See *R (on the application of Oncel) v Governor of Brixton Prison* (2002) Times, 17 January, DC (although technical defence of autrefois convict unavailable, the court, when determining whether it was unjust or oppressive to extradite defendant because of delay, considered undesirability under domestic law of defendant being tried twice for same offence).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(ii) Other Restrictions on Return/1181. Specialty.

1181. Specialty.

A person must not be returned, or committed or kept in custody for the purposes of return, unless provision is made by the relevant law¹, or by an arrangement² made with the relevant foreign state³, Commonwealth country, or colony, or with the Hong Kong Special Administrative Region⁴, for securing that he will not, unless he has first had an opportunity to leave it, be dealt with there for or in respect of any offence committed before his return to it other than⁵:

- 26 (1) the offence in respect of which his return is ordered⁶;
- 27 (2) an offence, other than an excluded offence⁷, which is disclosed by the facts in respect of which his return was ordered⁸; or
- 28 (3) any other offence being an extradition crime in respect of which the Secretary of State may consent to his being dealt with⁹.

However, the Secretary of State may not give consent under head (3) above in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made¹⁰.

1 A circular, issued by the Minister of Justice to the law officers of the French Government, and including this restriction, is a 'provision made by law': *Re Bouvier* (1872) 42 LJQB 17. See also *Re Woodall* (1888) 59 LT 549, 4 TLR 532 (no express provision in United States law, but provision held to exist in consequence of decision of Supreme Court in *United States v Rauscher* (1886) 12 Davis's Sup Ct Rep 407, 119 US 407, that the provision was of necessity to be implied in the principles of extradition); *R v Secretary of State for Home Department, ex p Hill* [1999] QB 886, [1997] 2 All ER 638, DC (where the Secretary of State accepted, and was found to be entitled to accept, an undertaking by the Attorney General of Witwatersrand, rather than the government of the Republic of South Africa).

The court assumes that a foreign government will honour its obligation under any such law or arrangement as is referred to in the Extradition Act 1989 s 6(4) (as amended) and an undertaking is not required to be given in each case: cf *Royal Government of Greece v Governor of Brixton Prison* [1971] AC 250, [1969] 3 All ER 1337, HL.

The Extradition Act 1989 s 6(4) (as amended) contemplates two existing juridical countries which have respectively made and received a request for extradition and is not concerned with different situations which might prevail in the future: *R v Governor of Brixton Prison, ex p Osman (No 3)* [1992] 1 All ER 122, [1992] 1 WLR 36, DC. A state could not be required to give an undertaking beyond its own sovereign powers: *R v Secretary of State for the Home Office, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL (Secretary of State entitled to conclude that the applicant would not be surrendered from the Hong Kong Special Administrative Region to the People's Republic of China).

As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

2 Any such arrangement which is made with a designated Commonwealth country or a colony may be an arrangement made for the particular case or an arrangement of a more general nature, and a certificate issued by or under the authority of the Secretary of State confirming the existence of an arrangement with a Commonwealth country or a colony and stating its terms is conclusive evidence of the matters contained in the certificate: Extradition Act 1989 s 6(7). For the meaning of 'designated Commonwealth country' see PARA 1120 ante. For the meaning of 'colony' see PARA 1106 note 6 ante. As to the Secretary of State see PARA 1116 ante.

3 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

4 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

5 Extradition Act 1989 s 6(4) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 4(b)).

6 Extradition Act 1989 s 6(4)(a).

7 The offences excluded from *ibid* s 6(4)(b) are offences in relation to which an order for the return of the person concerned could not lawfully be made: s 6(5).

8 *Ibid* s 6(4)(b).

9 *Ibid* s 6(4)(c), which is subject to s 6(6) (see the text to note 10 *infra*).

10 *Ibid* s 6(6).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 *et seq.*

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(ii) Other Restrictions on Return/1182. Taking of hostages.

1182. Taking of hostages.

A person may not be returned under the Extradition Act 1989 to a designated Commonwealth country¹ which is party² to the International Convention against the Taking of Hostages³, or committed or kept in custody⁴ for the purposes of such return, if it appears to the appropriate authority⁵:

- 29 (1) that he might, if returned, be prejudiced at his trial by reason of the impossibility of effecting communications between him and the appropriate authorities of the state entitled to exercise rights of protection in relation to him⁶; and
- 30 (2) that the act or omission constituting the offence of which he has been accused or convicted also constituted an offence under the Taking of Hostages Act 1982⁷ or an attempt to commit such an offence⁸.

1 For the meaning of 'designated Commonwealth country' see PARA 1120 ante. As to the procedure for designation see the Extradition Act 1989 s 5; and PARA 1167 ante.

2 Where the Secretary of State certifies that a country is a party to the Convention, the certificate, in any proceedings under the Extradition Act 1989, is conclusive evidence of that fact: s 25(2). As to the Secretary of State see PARA 1116 ante.

3 I.e. the International Convention against the Taking of Hostages (Cmnd 7893) (1983) (opened for signature at New York, 18 December 1979; TS 81 (1983); Cmnd 9100): Extradition Act 1989 s 25(3).

4 As to provisions relating to custody see *ibid* s 17; and PARA 1191 post.

5 For the meaning of 'appropriate authority' see PARA 1174 note 2 ante.

6 Extradition Act 1989 s 25(1)(a).

7 I.e. the Taking of Hostages Act 1982 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 468).

8 Extradition Act 1989 s 25(1)(b).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON RETURN/(ii) Other Restrictions on Return/1183. Unjust or oppressive to return.

1183. Unjust or oppressive to return.

Where a person is committed¹, the court must inform him in ordinary language of his right to make an application for habeas corpus², and must forthwith give notice of the committal to the Secretary of State³. A person committed may not be returned: (1) in any case, until the expiration of the period of 15 days beginning with⁴ the day on which the order for his committal is made⁵; or (2) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending⁶.

Without prejudice to any other jurisdiction⁷ of the High Court⁸, the court must order the applicant's discharge if it appears to the court in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that: (a) by reason of the trivial nature of the offence⁹; or (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be¹⁰; or (c) because the accusation against him is not made in good faith in the interests of justice¹¹, it would, having regard to all the circumstances, be unjust or oppressive to return him¹².

1 le under the Extradition Act 1989 s 9 (as amended) (see PARA 1189 post).

2 On any such application the court may receive additional evidence relevant to the exercise of its jurisdiction under *ibid* s 6 (as amended) (see PARAS 1174, 1179, 1181 ante) or s 11(3) (see the text to note 7-12 infra): s 11(4). As to the court's jurisdiction on an application for habeas corpus see PARAS 1217-1228 post.

3 *Ibid* s 11(1). As to the Secretary of State see PARA 1116 ante.

4 The use of the words 'beginning with' makes it clear that in computing this period of 15 days, the day from which it runs is to be included: see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA.

5 Extradition Act 1989 s 11(2)(a).

6 *Ibid* s 11(2)(b). Proceedings on an application for habeas corpus are treated for the purposes of s 11 as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal: s 11(5).

7 le its jurisdiction to grant the writ of habeas corpus: see PARAS 1217-1228 post.

8 For the meaning of 'High Court' see PARA 1174 note 2 ante.

9 Extradition Act 1989 s 11(3)(a).

10 *Ibid* s 11(3)(b).

11 *Ibid* s 11(3)(c).

12 *Ibid* s 11(3). As to cases decided under this provision see PARA 1222 post.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1184. Extradition request.

(4) PROCEDURE

1184. Extradition request.

An extradition request is the formal process by which a country requests the extradition of a person whom that country wishes to try or, if already tried, to punish for crimes committed within that country's jurisdiction¹. The request initiates the extradition process, unless the person sought is required to be arrested as a matter of urgency, in which case a provisional warrant may be applied for².

A person must not be dealt with under these provisions³ except in pursuance of an order of the Secretary of State⁴ (an 'authority to proceed') issued in pursuance of a request (an 'extradition request') for the surrender of a person under the Extradition Act 1989 made to the Secretary of State⁵: (1) by an authority in a foreign state⁶ which appears to the Secretary of State to have the function of making extradition requests in that foreign state, or some person recognised by the Secretary of State as a diplomatic or consular representative of a foreign state⁷; or (2) by or on behalf of the government of a designated Commonwealth country⁸, or the governor⁹ of a colony¹⁰; or (3) by or on behalf of the government of the Hong Kong Special Administrative Region¹¹.

An extradition request may be made by facsimile transmission and an authority to proceed issued without waiting to receive the original¹². The request must be in writing and authenticated¹³, though it need not be authenticated at the time of its receipt¹⁴. The requirement is that it must be in the appropriate form at committal¹⁵. The requesting country may have agreed to the simplification of this process¹⁶.

1 For the meaning of 'extradition' see PARA 1101 ante.

2 See PARA 1188 post.

3 I.e. the Extradition Act 1989 Pt III (ss 7-17) (as amended).

4 As to the Secretary of State see PARA 1116 ante.

5 Extradition Act 1989 s 7(1) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 37(3)(a)), which is subject to the provisions of the Extradition Act 1989 relating to provisional warrants.

6 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

7 Extradition Act 1989 s 7(1)(a) (as substituted: see note 5 supra).

8 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

9 For the meaning of 'governor' see PARA 1201 note 7 post.

10 Extradition Act 1989 s 7(1)(b). For the meaning of 'colony' see PARA 1106 note 6 ante.

11 Ibid s 7(1)(c) (added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 5(a)). As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

12 Extradition Act 1989 s 7(1) (as amended: see note 5 supra). See the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596. See also PARA 1141 ante. Where an extradition request is made by facsimile transmission the Extradition Act 1989 (including s 7(2) (see PARA 1185 post)) has effect as if the foreign documents so sent were the originals used to make the transmission and receivable in evidence accordingly: s 7(7) (added by the Criminal Justice and Public Order Act 1994 Sch 9 para 37(3)(c)).

13 As to the authentication of foreign documents and evidence see the Extradition Act 1989 ss 26 (as amended), 27; and PARA 1119 ante.

14 *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1999] 1 WLR 1513, DC.

15 *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1999] 1 WLR 1513, DC. See also the Extradition Act 1989 s 9(8) (as amended); and PARA 1190 post.

16 Ie by signing the Agreement between Member States of the European Community on the Simplification and Modernisation of Methods of Transmitting Extradition Requests (EC 24 (1996); Cm 3489) ('the Agreement'), which is set out in the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, art 2, Sch 1: see PARA 1141 ante. As to the relevant provisions which apply as between the United Kingdom and other states who are signatories to this agreement see art 2; and PARA 1141 note 3 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1184-1187 Extradition request ... Warrant

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1185. Supporting documentation.

1185. Supporting documentation.

An extradition request¹ must be supported by: (1) particulars of the person whose return is requested²; (2) particulars of the offence of which he is accused or was convicted (including evidence or, in certain cases³, information sufficient to justify the issue of a warrant for his arrest under the Extradition Act 1989)⁴; (3) in the case of a person accused of an offence, a warrant or a duly authenticated copy of a warrant for his arrest issued in the foreign state, Commonwealth country or colony⁵ or in the Hong Kong Special Administrative Region⁶; and (4) in the case of a person unlawfully at large after conviction of an offence, a certificate or a duly authenticated copy of a certificate of the conviction and sentence⁷. Copies of the supporting documents must be served on the person whose return is requested before he is brought before the court of committal⁸.

In addition to the requirements set out above, the European Convention on Extradition 1957 also specifies that the request is to be supported by a statement of the offences for which extradition is requested, the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions⁹. However, a failure to provide copies of the relevant provisions will not necessarily prevent the magistrate¹⁰ from reaching a conclusion. An appropriately sworn statement setting out the provisions may suffice to satisfy the magistrate, as required, that the conduct alleged is punishable with 12 months imprisonment¹¹. The legislative act of a foreign power does not prove itself¹², but if the documents have been authenticated by the oath of a witness or if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued or if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of the foreign state they will be received and admitted in evidence¹³.

In the case of a person whose extradition is requested on the basis of a conviction, the United Kingdom requires a statement as to whether the relevant conviction was obtained in the absence of the person requested¹⁴. The statement of the offences for which extradition is requested must contain a description of the conduct which it is alleged constitutes the offence or offences for which extradition is requested¹⁵. The request must be supported by a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality¹⁶. It is not necessary for the requesting state to provide a statement that the proceedings are not time barred¹⁷. If the information communicated by the requesting party is found to be insufficient to allow the requested party to make a decision in pursuance of the Convention, the latter party may request the necessary supplementary information and may fix a time limit for its receipt¹⁸.

1 For the meaning of 'extradition request' see PARA 1184 ante.

2 Extradition Act 1989 s 7(2)(a).

3 In a case falling within *ibid* s 7(2A) (as added) (see note 4 *infra*).

4 *Ibid* s 7(2)(b) (amended by the Criminal Justice and Public Order Act 1994 s 158(3)(a)). As to what evidence is required see *Re Dokleja* (31 January 1994) Lexis, Enggen Library, Cases File, DC. The evidence requirement is abrogated in relation to all Convention States (as to which see PARA 1121 ante): see the European Convention on Extradition Order 1990, SI 1990/1507, art 2, Sch 2 Pt I (as amended); and PARA 1121 note 3 ante. As to the European Convention on Extradition 1957 see PARA 1121 ante.

Where the extradition request is made by a foreign state, and an Order in Council falling within the Extradition Act 1989 s 4(5) (as amended) (see PARA 1170 ante) is in force in relation to that state, it is a sufficient compliance with s 7(2)(b) (as amended) to furnish information sufficient to justify the issue of a warrant for his arrest under the Extradition Act 1989: s 7(2A) (added by the Criminal Justice and Public Order Act 1994 s 158(3)(b)). For the meaning of 'foreign state' see PARA 1102 note 1 ante. 'Warrant', in the case of any foreign state, includes any judicial document authorising the arrest of a person accused of a crime: Extradition Act 1989 s 7(6). The definition of a warrant in s 7(6) includes, but is not restricted to judicial documents: see *Netherlands v Fenby* [1999] COD 468, DC.

5 For the meaning of 'colony' see PARA 1106 note 6 ante.

6 Extradition Act 1989 s 7(2)(c) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 37(3)(b); and the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 5(b)). As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante. As to the authentication of foreign documents and evidence see the Extradition Act 1989 ss 26 (as amended), 27; and PARAS 1118-1119 ante.

7 Ibid s 7(2)(d) (amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 37(3)(b)).

8 Extradition Act 1989 s 7(2). For the meaning of 'court of committal' see PARA 1189 text to note 11 post. In relation to requests from countries which are signatories of the Agreement between Member States of the European Community on the Simplification and Modernisation of Methods of Transmitting Extradition Requests (EC 24 (1996); Cm 3489) ('the Agreement'), and recognised by the United Kingdom in the European Convention on Extradition Order 1990 (Amendment) Order 1996, SI 1996/2596, these documents may be sent by facsimile transmission from the designated central authority in the same way as the extradition request: see the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) Art 2; and PARA 1141 ante. As to the European Convention on Extradition 1957 see PARA 1121 ante. The Articles of the European Convention on Extradition 1957 are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

Rules under the Magistrates' Courts Act 1980 s 144 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 588) may make provision as to the procedure for service under the Extradition Act 1989 s 7(2) (as amended) in England and Wales: s 7(3). At the date at which this volume states the law no such rules had been made. The practice, by agreement between the Crown Prosecution Service, the Home Office and the Metropolitan Police, is that copy documents are provided to the police officer executing the warrant of arrest for service upon the person sought.

9 See the European Convention on Extradition 1957 Art 12 para 2(b); and PARA 1141 ante.

10 As to the role of the magistrate see PARA 1115 ante.

11 *Re Agkurt* (20 November 1996) Lexis, Enggen Library, Cases File, DC.

12 *Re Amand* [1941] 2 KB 239 at 253, DC.

13 As to the authentication of foreign documents and evidence see the Extradition Act 1989 ss 26 (as amended), 27; and PARAS 1118-1119 ante. See also *Re Kiriakos* (7 November 1996) Lexis, Enggen Library, Cases File, DC; *Re Barone* (7 November 1997, unreported), DC.

14 See the European Convention on Extradition Order 1990, SI 1990/1507, Sch 4 art 12(1) (reservation by the United Kingdom); and PARA 1141 ante.

15 Ibid Sch 4 art 12(3) (reservation by the United Kingdom); and see PARA 1141 ante.

16 European Convention on Extradition 1957 Art 12 para 2(c); and see PARA 1141 ante.

17 *R v Bow Street Magistrates' Court, ex p Paloka* (1995) Times, 16 November, DC.

18 European Convention on Extradition 1957 Art 13; and see PARA 1142 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1184-1187 Extradition request ... Warrant

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1185 Supporting documentation

NOTES--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1186. Authority to proceed.

1186. Authority to proceed.

On receipt of the extradition request¹ the Secretary of State² may issue an authority to proceed³. This authorises the magistrates' court to proceed to the next stage of extradition proceedings. The documents supporting the request do not have to be duly authenticated at this stage, and the Secretary of State may issue the authority to proceed on the assumption that those requirements will be complied with before committal in the magistrates' court⁴. The Secretary of State may issue the authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made in accordance with the provisions of the Extradition Act 1989⁵. The authority to proceed must specify the offence or offences under the law of the United Kingdom⁶ which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom⁷. A failure to include all of the relevant elements in the description of the United Kingdom offence will lead to the quashing of the authority to proceed⁸. The Secretary of State does not need to set out the offences with the same particularity as an indictment, nor is he required to quote the relevant statutory provisions creating the offence or offences⁹. The Secretary of State may specify any offences under United Kingdom law which appear to be disclosed by the documents accompanying the request for extradition and is not limited by the description of offences as disclosed in the indictment sent by the requesting state¹⁰. The authority to proceed does not need to incorporate the particulars of the foreign charges, but if it does do so the prosecution cannot go outside the particulars of the offences specified¹¹.

If the authority to proceed is defective any proceedings following it are also bad¹². If the authority to proceed is valid, but the provisional warrant was unlawful, the proceeding is valid¹³. It is not unlawful for there to be several authorities to proceed in relation to the same request¹⁴.

1 For the meaning of 'extradition request' see PARA 1184 ante.

2 As to the Secretary of State see PARA 1116 ante.

3 Extradition Act 1989 s 7(4). For the meaning of 'authority to proceed' see PARA 1184 ante.

4 *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1999] 1 WLR 1513, DC.

5 Extradition Act 1989 s 7(4).

6 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

7 Extradition Act 1989 s 7(5).

8 See *Re Farinha* [1992] Imm AR 174, DC, where the court held that strict compliance with the requirement of the provision must be insisted on by the court as it is the liberty of the subject or of the person that is in issue. This principle was also applied in *Re Espigule-Jorda* (9 December 1991) Lexis, Enggen Library, Cases File, DC, where the applicant was discharged because the authority to proceed omitted vital words in the description of the United Kingdom offence.

9 *Re Farinha* (1993) Times, 3 May, DC.

10 *R v Secretary of State, ex p Hill* [1997] 2 All ER 638, [1998] 3 WLR 1011, DC.

11 *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999, [1990] 1 WLR 878, DC.

12 *Re Farinha* [1992] Imm AR 174, DC.

13 *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999 at 1012, 1014, [1990] 1 WLR 878 at 893, 895, DC, per Parker LJ.

14 *Rey v Government of Switzerland* [1999] AC 54, [1998] 3 WLR 1, PC (three separate authorities to proceed were issued to cater for possible different rulings of law as to the nature of the extradition crime by the magistrate). See also *Re Rees* [1986] AC 937, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321, HL. As to the role of the magistrate see PARA 1115 ante.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1184-1187 Extradition request ... Warrant

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1187. Warrant.

1187. Warrant.

Proceedings against a person whose return is sought commence by warrant¹. A warrant for the arrest of a person may be issued on receipt of an authority to proceed² by the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate³.

A person empowered to issue warrants of arrest⁴ may issue such a warrant if he is supplied with such evidence or, in certain cases⁵, information as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime⁶. Where evidence is required this need not be as substantial as that which would be necessary to obtain a conviction if the matter were to come to trial; it must be such evidence as would, in the opinion of the magistrate, authorise the issue of a warrant of arrest for the corresponding offence within the jurisdiction of the magistrate⁷. The magistrate must also be satisfied that the conduct alleged would be an extradition crime⁸. Where the person sought by the requesting state is in custody in England for other offences, the practice is for the extradition warrant to be executed only at a time shortly before the release of the person whose return is sought from the English sentence, at a time when the up-to-date circumstances can be considered⁹.

Where a warrant is issued¹⁰ for the arrest of a person accused of an offence of stealing or receiving stolen property in a designated Commonwealth country¹¹ or a colony¹², or any other offence committed in such a country or in a colony in respect of property, a justice of the peace in any part of the United Kingdom¹³ has the like power to issue a warrant to search for the property as if the offence had been committed within his jurisdiction¹⁴.

1 As to proceedings for committal see the Extradition Act 1989 s 9 (as amended); and PARA 1190 post.

2 For the meaning of 'authority to proceed' see PARA 1184 ante.

3 Extradition Act 1989 s 8(1)(a)(i). For the meaning of 'designated metropolitan magistrate' see PARA 1201 note 11 post. As from a day to be appointed, the reference to the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate in s 8(1)(a)(i) is to be replaced with a reference to the 'Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him': see s 8(1)(a)(i) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31-32). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

4 Ie under the Extradition Act 1989 s 8 (as amended).

5 Ie a case falling within *ibid* s 8(3A) (as added) (see note 6 *infra*).

6 *Ibid* s 8(3) (amended by Criminal Justice and Public Order Act 1994 s 158(1), (4)). 'For the meaning of 'extradition crime' see PARAS 1172-1173 ante. Where the extradition request or, where a provisional warrant is applied for, the request for the person's arrest is made by a foreign state, and an Order in Council falling within the Extradition Act 1989 s 4(5) is in force in relation to that state, it is sufficient for the purposes of s 8(3) (as amended) to supply such information as would, in the opinion of the person so empowered, justify the issue of a warrant of arrest: s 8(3A) (added by the Criminal Justice and Public Order Act 1994 s 158(4)(b)). For the meaning of 'extradition request' see PARA 1184 ante. For the meaning of 'provisional warrant' see PARA 1188 post. For the meaning of 'foreign state' see PARA 1102 note 1 ante.

7 See *Re Dokleja* (31 January 1994) Lexis, Enggen Library, Cases File, DC, per Kennedy LJ. See also *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999, [1990] 1 WLR 878, DC, in which Parker LJ quotes Sir George Jessel in *R v Weil* (1882) 9 QBD 701 at 706 to the effect that 'There must be some

evidence, but very little will do, for it is merely for the purpose of detaining the man. It is very different from the evidence which is required under [the Extradition Act 1870 s 10] to justify the committal of the prisoner'.

The magistrate's jurisdiction in relation to the issue of a warrant is to be found in the Magistrates' Courts Act 1980: see *Re Dokleja* supra per Kennedy LJ.

8 See the Extradition Act 1989 s 8(3) (as amended), (3A) (as added); and note 6 supra.

9 *Benderoth v Governor of Brixton Prison* (15 May 1998, unreported), DC, referring to the Extradition Act 1989 s 12(3) (see PARA 1193 post).

10 le under ibid s 8 (as amended) (see supra; and PARA 1188 post).

11 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

12 For the meaning of 'colony' see PARA 1106 note 6 ante.

13 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

14 Extradition Act 1989 s 8(6).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1184-1187 Extradition request ... Warrant

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1188. Provisional warrant.

1188. Provisional warrant.

If the case needs to be proceeded with as a matter of urgency, before an authority to proceed¹ can be obtained, a provisional warrant may be applied for. A provisional warrant for the arrest of a person may be issued without an authority to proceed² by a metropolitan magistrate³, and by a justice of the peace in any part of the United Kingdom⁴, upon information that the said person is or is believed to be in or on his way to the United Kingdom⁵. The provisional warrant procedure is essentially an emergency procedure for taking a person into custody and accordingly no evidence is required, information will suffice⁶. Where a provisional warrant is so issued, the authority by whom it is issued must forthwith give notice to the Secretary of State⁷ and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued⁸. The Secretary of State may in any case, and must if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under it, discharge him from custody⁹.

In relation to extradition requests from states that are party to the European Convention on Extradition 1957¹⁰, the Convention sets out requirements relating to provisional arrest which overlap with the domestic provisions of the United Kingdom¹¹ and it is presumed that unless there is conflict with the treaty, the law of the requested party will govern procedure¹². The Convention limits the time during which a person may be detained before the request has been received¹³.

The court of committal¹⁴ may fix a period after which the person will be discharged from custody, unless an authority to proceed has been received¹⁵.

1 For the meaning of 'authority to proceed' see PARA 1184 ante.

2 Extradition Act 1989 s 8(1)(b).

3 Ibid s 8(1)(b)(i). For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 post. As from a day to be appointed, s 8(1)(b)(i) is to be repealed: see the Access to Justice Act 1999 s 106, Sch 15 Pt V(3). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

4 Extradition Act 1989 s 8(1)(b)(ii). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Ibid ss 8(1)(b), 35(1). As to a warrant issued for the arrest of a person accused of an offence of stealing or receiving stolen property in a designated Commonwealth country or a colony see PARA 1187 ante. For the meaning of 'designated Commonwealth country' see PARA 1120 ante; and for the meaning of 'colony' see PARA 1106 note 6 ante.

6 *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999 at 1007-1008, [1990]1 WLR 878 at 887, DC, per Parker LJ.

7 As to the Secretary of State see PARA 1116 ante.

8 Extradition Act 1989 s 8(4).

9 Ibid s 8(4).

10 See the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762); the European Convention on Extradition Order 1990, SI 1990/1507, Sch 2 Pt I (as amended); and PARA 1121 note 6 ante.

11 See European Convention on Extradition 1957 Art 16; and PARA 1145 ante.

12 See *ibid* Art 22; and PARA 1151 ante.

13 See *ibid* Art 16(4); and PARA 1145 ante.

14 For the meaning of 'court of committal' see PARA 1189 text to note 11 ante.

15 See the Extradition Act 1989 s 9(5); and PARA 1189 post. See also *R v Governor of Brixton Prison, ex p Quentin* (27 October 1997) Lexis, Enggen Library, Cases File, DC.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1188 Provisional warrant

NOTE 10--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1189. Arrest.

1189. Arrest.

A warrant of arrest¹, whether it is issued on receipt of the authority to proceed² or whether it is provisional³, may, without being backed, be executed in any part of the United Kingdom⁴ and may be so executed by any person to whom it is directed or by any constable⁵. Accordingly, a warrant issued under Part III of the Extradition Act 1989⁶ in England can be executed without more in Scotland and Northern Ireland⁷. This is also the case in relation to the Channel Islands and the Isle of Man⁸. A person arrested in pursuance of such a warrant must (unless previously discharged⁹) be brought as soon as practicable before a court ('the court of committal') consisting of a metropolitan magistrate¹⁰ as directed by the warrant¹¹.

For the purposes of these proceedings¹², a court of committal in England and Wales has the like powers, as nearly as may be, including powers to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, as if the proceedings were the summary trial of an information against him¹³. If a court of committal in England and Wales exercises its power to adjourn the case it must on so doing remand the person arrested in custody or on bail¹⁴.

Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court must give notice to the Secretary of State¹⁵) after which he will be discharged from custody unless such an authority has been received¹⁶. Where the extradition request is made under general extradition arrangements but no period is specified, or the application is made under special extradition arrangements¹⁷, the court of committal may fix a reasonable period¹⁸.

In relation to countries covered by the European Convention on Extradition 1957, the Convention lays down a maximum time limit of 40 days between a provisional arrest and the receipt of a request for extradition and the supporting documentation¹⁹. If the documents have not arrived in that time the person requested must be released, though he may be re-arrested if the request for extradition is received subsequently²⁰.

In exercising the power conferred²¹ in a case where the extradition request is made by or on behalf of the government of the Hong Kong Special Administrative Region²², the court may not fix a period ending more than 60 days after the day of the person's arrest, unless the exceptional circumstances of the case justify a longer period²³.

1 le issued under the Extradition Act 1989 s 8 (as amended) (see PARAS 1187-1188 ante).

2 For the meaning of 'authority to proceed' see PARA 1184 ante.

3 For the meaning of 'provisional warrant' see PARA 1188 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Extradition Act 1989 s 8(5). Constable means any person holding the office of constable, not a member of a police force holding the rank of constable. As to the attestation of constables see POLICE vol 36(1) (2007 Reissue) PARA 103; and as to their jurisdiction see POLICE vol 36(1) (2007 Reissue) PARAS 102, 109.

6 le *ibid* Pt III (ss 7-17) (as amended).

7 See notes 4-5 *supra*.

8 See the Extradition Act 1989 s 29(1); and PARA 1103 ante.

9 le under *ibid* s 8(4) (see PARA 1188 ante).

10 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 post.

11 Extradition Act 1989 ss 9(1), 35(1). As from a day to be appointed, the reference to consisting of a metropolitan magistrate as directed by the warrant in s 9(1) is to be repealed: see s 9(1) (prospectively amended by the Access to Justice Act 1999 ss 78(2), 106, Sch 11 paras 31, 33(1), (2), Sch 15 Pt V(3)). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

12 le under the Extradition Act 1989 s 9 (as amended).

13 *Ibid* s 9(2) (amended by the Criminal Justice and Public Order Act 1994 s 158). As from a day to be appointed, a court of committal is to consist of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him: see the Extradition Act 1989 s 9(2) (prospectively amended by the Access to Justice Act 1999 Sch 11 paras 31, 33(3)). At the date at which this volume states the law no such day had been appointed.

The Prosecution of Offences Act 1985 s 16(1)(c) (costs on dismissal) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059) applies accordingly, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested: Extradition Act 1989 s 9(2) (as so amended).

14 *Ibid* s 9(2A) (added by the Criminal Justice and Public Order Act 1994 s 158).

15 As to the Secretary of State see PARA 1116 ante.

16 Extradition Act 1989 s 9(5); and see PARA 1188 ante. In exercising the power so conferred in a case where the extradition request is made under general extradition arrangements the court must have regard to any period specified for the purpose in the Order in Council relating to the arrangements: s 9(6). For the meaning of 'extradition request' see PARA 1184 ante. For the meaning of 'general extradition arrangements' see PARA 1169 text to note 5 ante.

17 For the meaning of 'special extradition arrangements' see PARA 1169 text to note 6 ante.

18 Extradition Act 1989 s 9(7).

19 See the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) Art 16(4); and PARA 1145 ante. As to the European Convention on Extradition 1957 see PARA 1121 ante.

20 See *ibid* Art 16(5); and PARA 1145 ante.

21 le by the Extradition Act 1989 s 9(5) (see the text to note 16 supra).

22 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

23 Extradition Act 1989 s 9(7A) (added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 6).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1189-1191 Arrest ... Custody

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1190. Committal proceedings.

1190. Committal proceedings.

For the court to proceed with the committal, the documents before it must be properly authenticated¹. This includes the particulars of the conduct which constitutes an offence in the requesting state, the particulars of the law of the requesting state under which the conduct is punishable, and the warrant of arrest² issued by the requesting state³. If the documents are so authenticated the contents of the documents are admissible per se, without the necessity for sworn testimony⁴. The court of committal must be satisfied that the person it is considering is the person whose extradition is requested. This is necessary to found the jurisdiction of the court⁵ and will often be done by means of a photograph provided with the extradition request⁶ which the court can compare with the person before it⁷ and evidence from the arresting officers of comments made on arrest. It is not, however, necessary for the person sought to be physically present at the committal hearing if he is legally represented⁸. The court of committal must have received an authority to proceed⁹ from the Secretary of State¹⁰. The court has no power to commit on any charges other than those contained within the authority to proceed¹¹.

The court must be satisfied that the offence to which the authority relates is an extradition crime, and that the conduct is an extradition crime¹². If the charge, as formulated by the requesting state, does not include the elements which are necessary to show the offence within the jurisdiction in the United Kingdom, they must be excluded from consideration and the offence may not be an extradition crime¹³. The offence must be a crime under English law at the time it was committed¹⁴. A failure to include copies of the relevant enactments is not necessarily fatal to the proceedings; the court may be satisfied that the conduct alleged is a crime punishable with 12 months or more imprisonment by means of a sworn statement¹⁵.

Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence to which the authority relates is an extradition crime, and is further satisfied¹⁶: (1) where that person is accused of the offence, unless an Order in Council¹⁷ giving effect to general extradition arrangements¹⁸ under which the extradition request was made otherwise provides, that the evidence would be sufficient to make a case requiring an answer by that person if the proceedings were the summary trial of an information against him¹⁹; (2) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large²⁰, then the court, unless his committal is prohibited by any other provision of the Extradition Act 1989, must commit him to custody or on bail²¹ (a) to await the Secretary of State's decision as to his return²²; and (b) if the Secretary of State decides that he must be returned, to await his return²³.

In relation to Convention States, the European Convention on Extradition Order 1990²⁴ provides that it is not necessary for the requesting state to provide evidence sufficient to warrant the trial of that person to substantiate its request²⁵. Where this requirement has not been abrogated, the test is whether the evidence was such that a reasonable jury properly directed could convict²⁶. The magistrate²⁷ is required to ask himself whether, assuming that the facts established by the evidence as having occurred within the requesting country occurred in this country, they would show a sufficiently strong case to justify the committal for trial in the this country of the person whose return is sought²⁸. In deciding whether there is a case requiring answer, the magistrate is only entitled to admit such evidence as is admissible under English law²⁹. The magistrate is not concerned with the question whether the evidence produced by the requesting state would be available at the trial in the requesting state in admissible form,

applying the law of the requesting state, nor is he entitled to refuse to admit evidence obtained in a third state on consideration of the character of that state's regime³⁰.

The certificate of conviction is sufficient, if uncontradicted by other evidence, to prove that the person sought has in fact been convicted³¹.

The court of committal has a further jurisdiction to consider whether any of the general restrictions on return³² apply to the person whose extradition is sought³³. All of the protections afforded by the Extradition Act 1989 apply equally to persons kept in custody and those released on bail³⁴. A person may not be returned under Part III of the Extradition Act 1989³⁵, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority³⁶ that:

- 31 (i) the offence of which that person is accused or was convicted is an offence of a political character³⁷;
- 32 (ii) it is an offence under military law which is not also an offence under the general criminal law³⁸;
- 33 (iii) the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions³⁹; or
- 34 (iv) he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions⁴⁰.

There may be a further restriction on return which may apply in the case of a person who is alleged to be unlawfully at large after conviction of an extradition crime if it appears to an appropriate authority that the conviction was obtained in his absence and it would not be in the interests of justice to return him on the grounds of that conviction⁴¹. Similarly a person accused of an offence may not be returned, or committed or kept in custody for the purposes of return if it appears to an appropriate authority that if charged with that offence in the United Kingdom he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction⁴².

The person whose extradition is sought by a foreign state or designated Commonwealth country or colony or the Hong Kong Special Administrative Region also has the protection of the rule of specialty, and some consideration of this is necessary at the committal hearing⁴³.

There is no jurisdiction in the court of committal to discharge the person whose return is sought on the basis that the proceedings are an abuse of the process of the court⁴⁴. There is also no power in the court to require to see further material from the requesting state as a condition precedent to committal. Once the terms of the Extradition Act 1989 have been complied with the magistrate can look no further than the material provided⁴⁵.

Where a person is committed⁴⁶, the court must inform him of his right to make an application for habeas corpus and must give notice of the committal to the Secretary of State⁴⁷. A person so committed may not be returned, in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made, if an application for habeas corpus is made in his case, so long as proceedings on that application are pending⁴⁸. If the court is not satisfied⁴⁹ in relation to the person arrested, or his committal is prohibited by a provision of the Extradition Act 1989, the court must discharge him⁵⁰.

If the court of committal refuses to make an order in relation to a person⁵¹ in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, the foreign state, Commonwealth country or colony seeking the surrender of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved⁵². There is no duty on the magistrate to give reasons for his decision⁵³, but where the magistrate is legally qualified

and the matter is of great importance to the parties, he should explain quite briefly his reasons for his conclusions⁵⁴.

1 As to the authentication of foreign documents and evidence see the Extradition Act 1989 ss 26 (as amended), 27; and PARAS 1118-1119 ante. See also *R v Secretary of State, ex p Hill* [1997] 2 All ER 638, [1998] 3 WLR 1011, DC.

2 As to warrants of arrest see PARAS 1187-1188 ante.

3 *Re Cuoghi* [1999] 1 All ER 466, sub nom *R v Governor of Brixton Prison, ex p Cuoghi* [1998] 1 WLR 1513, DC, per Kennedy LJ.

4 *Re Kiriakos* (7 November 1996) Lexis, Enggen Library, Cases File, DC; *Re Barone* (7 November 1997, unreported), DC. These cases extend the principles set out in *R v Governor of Pentonville Prison, ex p Kirby* [1979] 2 All ER 1094, [1979] 1 WLR 541n, DC.

5 See *Re Anthony* (27 June 1995) Lexis, Enggen Library, Cases File, DC. See also *Re Osbourne* [1993] Crim LR 694, DC, in which the court held that the magistrate had not erred in receiving into evidence a photocopied photograph stapled to the warrant.

6 As to the extradition request see PARA 1184 ante.

7 See *Re Bradshar* (28 February 1984) Lexis, Enggen Library, Cases File, DC; *R v Governor of Pentonville Prison, ex p Rodriguez* (15 November 1984) Lexis, Enggen Library, Cases File, (1984) Times, 29 November, DC; *R v Governor of Pentonville Prison, ex p Voets* [1986] 2 All ER 630, [1986] 1 WLR 470, DC.

8 *R v Bow Street Magistrates Court, ex p Government of Germany* [1998] QB 556, [1998] 2 WLR 498, DC.

9 As to the authority to proceed see PARA 1184 ante.

10 As to the Secretary of State see PARA 1116 ante.

11 *Re Forwell* [1996] Crim LR 119, DC. See also the Extradition Act 1989 s 9(8) (as amended); and the text to note 19 infra.

12 As to extradition crimes see PARAS 1172-1173 ante.

13 *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999, [1990] 1 WLR 878, DC.

14 See *R v Bow Street Metropolitan Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL.

15 *Re Agkurt* (20 November 1996) Lexis, Enggen Library, Cases File, DC. See also *R v Bow Street Magistrates Court, ex p Odoli* (26 January 1994) Lexis, Enggen Library, Cases File, DC, in which it was held that the court could be satisfied by statements to the effect that the conduct alleged amounted to various specified crimes under Italian law, although the full text of the relevant articles of the Italian criminal code were not included. As to the requirement under the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) to include copies of the relevant enactments see Art 12 para 2(c); and PARA 1141 ante. As to the European Convention on Extradition 1957 see PARA 1121 ante.

16 Extradition Act 1989 s 9(8). For the meaning of 'court of committal' see PARA 1189 text to note 11 ante. Before coming to a conclusion as to whether the offence specified is an extradition crime, the court may hear representations in support of the request or on behalf of the requested person, but the court may not admit evidence on this point: see *Re Evans* [1994] 3 All ER 499, [1994] 1 WLR 1006, HL, where it was held that the magistrate must proceed on the basis that the relevant law of the requesting state was as set out in the request and evidence of foreign law (sought to be called by the person requested) was irrelevant and inadmissible.

17 Ie an Order in Council made under the Extradition Act 1989 s 4 (as amended) (see PARA 1170 ante).

This requirement has been abrogated, in relation to countries which are Convention States: see the European Convention on Extradition Order 1990, SI 1990/1507, art 3; and PARA 1132 ante. The wording of the Extradition Act 1989 s 9(4) (as amended) (see note 19 infra) is not the same as the European Convention on Extradition Order 1990, SI 1990/1507, art 3. See, however, the Extradition Act 1989 s 35(3) (as added); and PARA 1170 ante. For the meaning of 'Convention State' see PARA 1121 note 5 ante.

18 For the meaning of 'general extradition arrangements' see PARA 1169 text to note 5 ante.

19 Extradition Act 1989 s 9(8)(a) (amended by Criminal Justice and Public Order Act 1994 s 158). Where the extradition request is made by a foreign state, and an Order in Council such as is mentioned in the Extradition Act 1989 s 9(8) (as amended) is in force in relation to that state, there is no need to furnish the court of committal with evidence sufficient to make a case requiring an answer by the arrested person if the proceedings were the summary trial of an information against him: s 9(4) (amended by the Criminal Justice and Public Order Act 1994 s 158(5)(c)). For the meaning of 'foreign state' see PARA 1102 note 1 ante.

20 Extradition Act 1989 s 9(8)(b); and see *Re Kiriakos* (7 November 1996) Lexis, Enggen Library, Cases File, DC. See also *Re Cavallo* (13 March 1997) Lexis, Enggen Library, Cases File, DC (where the Italian government failed to establish this).

21 Extradition Act 1989 s 9(8).

22 Ibid s 9(8)(i).

23 Ibid s 9(8)(ii). If the court commits a person under s 9(8) (as amended), it must issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct: s 9(9). If the court commits a person to custody in the exercise of this power, it may subsequently grant bail if it considers it appropriate to do so: s 9(10). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

24 Ie the European Convention on Extradition Order 1990, SI 1990/1507 (as amended).

25 *Re Archondakis* (16 November 1994) Lexis, Enggen Library, Cases File, DC. See also the text and note 19 supra.

26 See *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701, [1990] 1 WLR 277, DC.

27 As to the role of the magistrate see PARA 1116 ante.

28 *R v Governor of Pentonville Prison, ex p Naghdi* [1990] 1 All ER 257 at 265, sub nom *Re Naghdi* [1990] 1 WLR 317 at 325-326, DC, per Woolf LJ.

29 See *R v Governor of Belmarsh Prison, ex p Martin* [1995] 2 All ER 548, [1995] 1 WLR 412, DC.

30 *Re Rees* [1986] AC 937, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321, HL.

31 *Royal Government of Greece v Governor of Brixton Prison* [1971] AC 250, [1969] 3 All ER 1337, HL.

32 Ie those in the Extradition Act 1989 s 6 (as amended): see PARAS 1174, 1179-1181 ante.

33 See PARAS 1174, 1179-1183 ante. The court of committal is identified as an appropriate authority before whom these arguments may be made by *ibid* s 6(9), which gives a similar jurisdiction in these matters also to the Secretary of State and to the High Court on an application for habeas corpus: see s 6(9); and PARA 1174 note 2 ante.

34 Although the wording of *ibid* s 6(1), (2) (as amended), (3) and (4) (as amended) (see PARA 1174, 1179-1181 ante) relates to being kept in custody, it has been held in *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994, [1998] 3 WLR 221, DC, that the phrase is intended to cover those released on bail. That case concerned specialty provision in the Extradition Act 1989 s 6(4) (as amended), but the reasoning must apply to the other provisions in s 6 (as amended) as the wording is identical. See also *Re Amand* [1941] 2 KB 239 at 249, DC (applicant on bail, but the court found that it must deal with the application as if he were in custody). As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

35 Ie under the Extradition Act 1989 Pt III (ss 7-17) (as amended).

36 Ibid s 6(1); and see PARA 1174 ante. For the meaning of 'appropriate authority' see PARA 1174 note 2 ante.

37 Ibid s 6(1)(a); and see PARA 1174 ante.

38 Ibid s 6(1)(b); and see PARA 1174 ante.

39 Ibid s 6(1)(c); and see PARA 1174 ante.

40 Ibid s 6(1)(d); and see PARA 1174 ante.

41 See *ibid* s 6(2) (as amended); and PARA 1179 ante.

42 Ibid s 6(3); and see PARA 1180 ante.

43 See PARA 1181 ante. For the meaning of 'designated Commonwealth country' see PARA 1120 ante; and for the meaning of 'colony' see PARA 1106 note 6 ante. As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 ante 8.

44 *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL. See also *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. In such a case the remedy of the person whose extradition is sought is under the general discretion of the Secretary of State as to whether to make the order to return: see the Extradition Act 1989 s 12(1); and PARA 1193 post.

45 *R v Governor of Pentonville Prison, ex p Lee* [1993] 3 All ER 504, [1993] 1 WLR 1294, DC. As to the certificate which must be issued on committal see note 23 supra.

46 Ie under the Extradition Act 1989 s 9 (as amended).

47 See *ibid* s 11(1); and PARA 1183 ante. As to habeas corpus see PARA 1217 et seq post.

48 Ibid s 11(2); and PARA 1183 ante.

49 Ie as mentioned in *ibid* s 9(8) (as amended) (see the text to note 16 supra).

50 Ibid s 9(11).

51 Ie under *ibid* s 9 (as amended).

52 Ibid s 10(1). As to case stated see PARA 1251 et seq post.

53 *Rey v Government of Switzerland* [1999] 1 AC 54 at 66-67, PC.

54 *R v Bow Street Magistrates' Court, ex p Allison* (13 May 1998) Lexis, Enggen Library, Cases File, (1998) Times, 2 June, DC.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1189-1191 Arrest ... Custody

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1190 Committal proceedings

NOTES 17, 24--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1191. Custody.

1191. Custody.

If a court of committal¹ in England and Wales exercises its power to adjourn the case, it must on so doing remand the person arrested in custody or on bail². Any person remanded or committed to custody³ must be committed to the like institution as a person charged with an offence before the court of committal⁴. A warrant for the return⁵ of any person is sufficient authority for all persons to whom it is directed and all constables⁶ to receive that person, keep him in custody and convey him into the jurisdiction to which he is to be returned⁷. If any person who is in custody by virtue of a warrant under the Extradition Act 1989 escapes out of custody, he may be retaken in any part of the United Kingdom⁸ in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed in that part⁹. Where a person, being in custody in any part of the United Kingdom, whether under Part III of the Extradition Act 1989 or otherwise, is required to be removed in custody under the Extradition Act 1989 to another part of the United Kingdom and is so removed by sea or by air, he is deemed to continue in legal custody until he reaches the place to which he is required to be removed¹⁰. The person sought has no general right to bail¹¹, and a magistrate¹² is therefore not required to give reasons for refusing bail¹³. Bail may be conditional or unconditional¹⁴. A refusal of bail may be appealed to the High Court¹⁵. The court of committal may, in Part III cases, commit the requested person to custody or on bail to await the decision of the Secretary of State¹⁶.

If the foreign state¹⁷, country or colony¹⁸ seeking return immediately informs the court of committal that it intends to make an application for statement of case¹⁹, the court must make an order providing for the detention of the person to whom the authority to proceed²⁰ relates, or directing that he must not be released except on bail²¹. Similarly on application to the High Court for habeas corpus²², if the person whose return is sought succeeds in his application for habeas corpus, and if the requesting state is granted or gives notice that it intends to apply for leave to appeal, the High Court has a jurisdiction to order that the person whose return is sought continue to be held on bail or in custody²³.

1 For the meaning of 'court of committal' see PARA 1189 text to note 11 ante.

2 Extradition Act 1989 s 9(2A) (added by the Criminal Justice and Public Order Act 1994 s 158(5)(b)); and see PARA 1189 ante.

3 Ie under the Extradition Act 1989 Pt III (ss 7-17) (as amended).

4 Ibid s 17(1).

5 Ie a warrant issued under ibid s 12 (as amended): see PARA 1193 ante/post.

6 As to constables see PARA 1189 note 5 ante.

7 Extradition Act 1989 s 17(4).

8 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

9 Extradition Act 1989 s 17(2).

10 Ibid s 17(3).

11 As to the general right to bail of the accused person and others see the Bail Act 1976 s 4(2) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169.

12 As to the role of the magistrate see PARA 1115 ante.

13 See the Bail Act 1976 ss 4(2) (as amended) (CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1169), 5(3). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173.

14 See *ibid* s 1(6); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165.

15 See *ibid* s 5(6) (as amended). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1173.

16 See the Extradition Act 1989 s 9(8) (as amended); and PARA 1190 ante. For the meaning of 'Part III cases' see PARA 1105 ante. As to the Secretary of State see PARA 1116 ante.

17 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

18 For the meaning of 'colony' see PARA 1106 note 6 ante.

19 As to statement of case by the court see the Extradition Act 1989 s 10(1); and PARAS 1190 ante, 1251 post.

20 For the meaning of 'authority to proceed' see PARA 1184 ante.

21 Extradition Act 1989 s 10(2). If the court of committal makes an order in accordance with s 10(2) releasing the person on bail, the clerk must forthwith send a copy of that order to the Crown Office: Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 4(1); and see PARA 1253 post.

22 As to an application for habeas corpus see the Extradition Act 1989 s 11; and PARA 1183 ante. As to habeas corpus see PARA 1217 et seq post.

23 See *United States Government v McCaffrey* [1984] 2 All ER 570, [1984] 1 WLR 867, HL, where the House of Lords strongly recommended that this procedure be used. As to the power to order detention or admission to bail of the defendant see the Administration of Justice Act 1960 s 5 (as amended). As to appeal in habeas corpus proceedings see s 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247. See also PARA 1213 post.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1189-1191 Arrest ... Custody

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1192. Waiver.

1192. Waiver.

A person may give notice that he waives the rights conferred on him¹. Such a notice must be given in England and Wales in the manner prescribed by rules under the Magistrates' Courts Act 1980²; and the power to make such rules includes power to make provision for a magistrate³ to order the committal for return of a person with his consent at any time after his arrest⁴. Where such an order is made, the Extradition Act 1989 ceases to apply to the person in respect of whom it is made, except that, if he is not surrendered within one month after the order is made, the High Court⁵ upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged⁶. In such a case there is no need for further monitoring by the Secretary of State⁷.

1 Extradition Act 1989 s 14(1). The rights referred to in the text are conferred by s 11 (right to apply for habeas corpus) (see PARA 1183 ante): see s 14(1). Where this form of waiver is used, the person sought retains the right to make representations at committal and retains the protections of the Extradition Act 1989, such as speciality and the supervision of the Secretary of State who must still issue the warrant ordering the return of the person sought: see ss 6 (as amended), 9(8), 12(1). As to the Secretary of State see PARA 1116 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

A notice given under s 14 or s 1(3), Sch 1 para 9 (notice of waiver under the simplified procedure) (see PARA 1215 post) must be in the prescribed form or a form to the like effect: see the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 5(1), Schedule Form 1. Such a notice must be signed in the presence of a metropolitan magistrate, a justice of the peace or a justices' clerk: r 5(2). For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 post; definition applied by r 2. Any such notice given by a person in custody must be delivered to the governor of the prison in whose custody he is: r 5(3). If a person on bail gives such notice he must deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the Under Secretary of State, Home Office, London SW1H 9AT: r 5(4).

2 See the Magistrates' Courts Act 1980 s 144 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 588). See the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597.

3 As to the role of the magistrate see PARA 1115 ante.

4 Extradition Act 1989 s 14(2), which is expressed to be without prejudice to the generality of the Magistrates' Courts Act 1980 s 144(1).

5 For the meaning of 'High Court' see PARA 1174 note 2 ante.

6 Extradition Act 1989 s 14(4). A person arrested in pursuance of a warrant under s 8 (as amended) (see PARAS 1187-1189 ante) or Sch 1 para 5 (prospectively amended) (see PARA 1212 post) may at any time consent to his return; and where such consent is given in accordance with the following provision, a metropolitan magistrate may order the committal for return of that person in accordance with s 14(2) (see the text to note 4 infra) or, as the case may be, Sch 1 para 9(2) (see PARA 1215 post): Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 6(1). A notice of consent for the purposes of r 6 must be given in the prescribed form or a form to the like effect and must be signed in the presence of a metropolitan magistrate: see r 6(2), Schedule Form 2.

7 *R v Secretary of State for the Home Department, ex p Akbar* (31 July 1996) Lexis, Enggen Library, Cases File, DC.

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1192 Waiver

NOTE 1--For 'a metropolitan magistrate' read 'the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him': SI 1989/1597 r 5(2) (amended by SI 2000/1872). SI 1989/1597 Schedule Form 1 amended: SI 2000/1872.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/3. CASES UNDER PART III OF THE EXTRADITION ACT 1989/(4) PROCEDURE/1193. Power of Secretary of State to issue warrant for return.

1193. Power of Secretary of State to issue warrant for return.

Where a person is committed¹ and is not discharged² by order of the High Court³, the Secretary of State⁴ may by warrant order him to be returned⁵ unless his return is prohibited⁶, or prohibited for the time being, by the Extradition Act 1989, or the Secretary of State decides to make no such order in his case⁷. Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state⁸, Commonwealth country or colony⁹ or to the Hong Kong Special Administrative Region¹⁰: (1) the Secretary of State must not make an order in the case of any person if it appears to the Secretary of State in relation to the offence, or each of the offences, in respect of which his return is sought, that: (a) by reason of its trivial nature¹¹; or (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be¹²; or (c) because the accusation against him is not made in good faith in the interests of justice¹³, it would, having regard to all the circumstances, be unjust or oppressive to return him¹⁴; and (2) the Secretary of State may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in Great Britain¹⁵ if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made¹⁶. Notice of the issue of a warrant for the return of a person to a Commonwealth country or colony must forthwith be given to the person to be returned¹⁷.

An order for return may not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom¹⁸: (i) in the case of a person serving such a sentence, until the sentence has been served¹⁹; (ii) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served²⁰. The Secretary of State may decide to make no order for the return of a person committed in consequence of an extradition request²¹ if another extradition request or a requisition²² has been made in respect of him and it appears to the Secretary of State, having regard to all the circumstances of the case and in particular²³: (A) the relevant seriousness of the offences in question²⁴; (B) the date on which each such request was made²⁵; and (C) the nationality or citizenship of the person concerned and his ordinary residence²⁶, that preference should be given to that other request or requisition²⁷.

Any warrant or order to be issued or made by the Secretary of State under the Extradition Act 1989 must be given under the hand of the Secretary of State, a Minister of State or an Under-Secretary of State²⁸, and it follows that the decision may be delegated by the Secretary of State to a Minister of State or Under-Secretary of State²⁹.

The Secretary of State must give the person to whom an order³⁰ for return to a foreign state or to the Hong Kong Special Administrative Region would relate notice in writing that he is contemplating making such an order³¹. The person to whom such an order would relate has a right to make representations, at any time before the expiration of the period of 15 days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order may be made in relation to him before the end of that period³². It is the duty of the Secretary of State to consider any representations made in the exercise of that right³³. Unless the person to whom it relates waives the right conferred on him³⁴, he may not be returned to the foreign state or to the Hong Kong Special Administrative Region until the expiration of the period of 7 days commencing with the date on which the warrant is issued or such longer period as in England and Wales,

rules³⁵ may provide³⁶. At any time within that period he may apply for leave to seek judicial review of the Secretary of State's decision to make the order³⁷. If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending³⁸.

Proceedings for judicial review are treated for these purposes as pending (unless they are discontinued) until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal³⁹. A warrant⁴⁰ must state in ordinary language that the Secretary of State has considered any representations made in the exercise of the right so conferred⁴¹, and must explain in ordinary language the rights conferred on a person whose return to a foreign state or to the Hong Kong Special Administrative Region has been ordered⁴², and a copy must be given to the person to whom it relates as soon as the order for his return is made⁴³.

1 le under the Extradition Act 1989 s 9 (as amended) (see PARAS 1189-1191 ante).

2 As to discharge see *ibid* ss 11(3), 16; and PARAS 1183 ante, 1257 post.

3 For the meaning of 'High Court' see PARA 1174 note 2 ante. As to the High Court see also PARA 1117 ante.

4 As to the Secretary of State see PARA 1116 ante.

5 As to the contents of a warrant see the Extradition Act 1989 s 13(9) (as amended); and text to note 43 *infra*. As to the form of warrants see s 28 (as amended); and text to note 28 *infra*.

6 As to the general restrictions on return see *ibid* s 6 (as amended); and PARAS 1174, 1179-1181 ante.

7 *Ibid* s 12(1).

8 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

9 For the meaning of 'colony' see PARA 1106 note 6 ante.

10 Extradition Act 1989 s 12(2) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 8). As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

11 Extradition Act 1989 s 12(2)(a)(i).

12 *Ibid* s 12(2)(a)(ii).

13 *Ibid* s 12(2)(a)(iii).

14 *Ibid* s 12(2)(a). 'Unjust' in this context is directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' to hardship to the accused resulting from the changes in his circumstances that have occurred during the period to be taken into consideration: *Kakis v Government of the Republic of Cyprus* [1978] 2 All ER 634 at 638, [1978] 1 WLR 779 at 782-783, HL, per Lord Diplock. See also *Union of India v Narang* [1978] AC 247, [1977] 2 All ER 348, HL.

15 For the meaning of 'Great Britain' see PARA 1101 note 10 ante.

16 Extradition Act 1989 s 12(2)(b).

17 *Ibid* s 12(6).

18 *Ibid* s 12(3). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

19 *Ibid* s 12(3)(a).

20 *Ibid* s 12(3)(b).

21 For the meaning of 'extradition request' see PARA 1184 ante.

22 le under the Extradition Act 1989 Sch 1 (as amended).

23 *Ibid* s 12(5).

24 Ibid s 12(5)(a).

25 Ibid s 12(5)(b).

26 Ibid s 12(5)(c).

27 Ibid s 12(5).

28 Ibid s 28(1). The Secretary of State may by regulations made by statutory instrument prescribe the form of any document required for the purposes of the Extradition Act 1989 in its application to return to foreign states (except a notice under s 14: see PARA 1192 ante) and the form of any warrant or order to be issued or made under the Extradition Act 1989 in its application to return to Commonwealth countries, colonies and the Hong Kong Special Administrative Region: s 28(2) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 14).

29 *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC.

30 Ie under the Extradition Act 1989 s 12(1) (see the text to note 7 supra).

31 Ibid s 13(1) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 9(a)).

32 Extradition Act 1989 s 13(2). See PARA 1245 post. A notice under s 13(1) (as amended) (see the text to note 31 supra) must explain in ordinary language the right conferred by s 13(2): s 13(3).

33 Ibid s 13(4).

34 Ie by ibid s 13(6) (see the text to note 37 infra).

35 Ie rules under the Supreme Court Act 1981 s 84 (as amended) (see COURTS vol 10 (Reissue) PARAS 577-578).

36 Extradition Act 1989 s 13(5) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 9(b)).

37 Extradition Act 1989 s 13(6). As to challenges by way of judicial review to decisions of the Secretary of State see PARA 1250 post.

38 Ibid s 13(7).

39 Ibid s 13(8).

40 Ie under ibid s 12 (as amended) (see supra).

41 Ie by ibid s 13(2) (see the text to note 32 supra).

42 See note 40 supra.

43 Extradition Act 1989 s 13(9) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, Schedule para 9(c)).

UPDATE

1165-1193 Cases under Part III of the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1193 Power of Secretary of State to issue warrant for return

NOTE 35--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1194. Application of Schedule 1 to the Extradition Act 1989.

4.

(1) PERSONS LIABLE TO EXTRADITION

1194. Application of Schedule 1 to the Extradition Act 1989.

Where an Order in Council under the Extradition Act 1870¹ is in force in relation to a foreign state², Schedule 1 to the Extradition Act 1989³ has effect in relation to that state, but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the Order⁴.

¹ I.e. under the Extradition Act 1870 s 2 (repealed) (see PARA 1158 ante). The repeal of the Extradition Act 1870 does not affect an Order in Council made under s 2 or the power to revoke or alter such an Order: see the Extradition Act 1989 s 37(3); and PARA 1102 note 4 ante. An Order in Council under the Extradition Act 1870 s 2 (repealed) is conclusive evidence that the arrangement referred to in it complies with the Extradition Act 1989 s 1(3), Sch 1 (as amended) and that Sch 1 (as amended) applies in the case of the foreign state mentioned in the Order: Sch 1 para 2. As to the foreign states to which Sch 1 (as amended) applies and the relevant Orders in Council see PARA 1158 ante.

² For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 post.

³ I.e. the Extradition Act 1989 Sch 1 (as amended).

⁴ Ibid s 1(3).

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1195. Liability of fugitive criminal to surrender.

1195. Liability of fugitive criminal to surrender.

Where Schedule 1 to the Extradition Act 1989¹ has effect in the case of any foreign state², every fugitive criminal³ of that state who is in or suspected of being in⁴ any part of Her Majesty's dominions⁵, or that part which is specified in the Order in Council⁶ relating to that state (as the case may be), is liable to be apprehended and surrendered⁷, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime⁸.

1 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 post.

3 For the meaning of 'fugitive criminal' see PARA 1196 post.

4 The requirement is that the fugitive criminal must be 'in, or suspected of being in, any part of Her Majesty's dominions', but that rule is occasionally qualified by the terms of the relevant treaty. Where such a treaty provides for the return of persons who, being accused or convicted of an extradition crime, are 'found' within the territory of a contracting party, the word 'found' means no more than that the person in question must be present in this country when the charge was preferred: *Atkinson v United States Government* [1971] AC 197 at 245, [1969] 3 All ER 1317 at 1332, HL, per Lord Guest, and cf at 237 and 1326 per Lord Morris of Borth-y-Gest.

In proceedings under the Extradition Act 1989 Sch 1 (as amended), in common with proceedings under Pt III (ss 7-17) (as amended), the magistrate hearing an application for committal has no power to refuse to commit the fugitive on the ground that the proceedings might be an abuse of process, including whether the fugitive's presence in the jurisdiction was brought about by deception, but must commit him if the requirements of Sch 1 para 7 (as amended) (see PARA 1213 post) are satisfied: see *Atkinson v United States Government* supra; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. As to the role of the magistrate see PARA 1115 ante. The High Court has no general supervisory jurisdiction to intervene in the proceedings on the grounds of abuse of process and unlike Part III cases (where the High Court is given statutory power to intervene in defined circumstances: see s 11(3); and PARA 1183 ante) it cannot intervene if it would be unjust or oppressive to return the fugitive criminal: see *Atkinson v United States Government* supra; *R v Governor of Pentonville Prison, ex p Sinclair* supra. The sole safeguard for the fugitive in the case of an alleged abuse of power is the general discretion of the Secretary of State under Sch 1 para 8(2) (see PARA 1215 post): see *Atkinson v United States Government* supra; *R v Governor of Pentonville Prison, ex p Sinclair* supra. For a case falling under the Extradition Act 1989 Pt III (as amended) see *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL. For a discussion of the jurisdiction of the High Court in both Part III cases and Schedule 1 cases see PARAS 1220, 1222 post. For the meaning of 'Part III cases' see PARA 1105 ante; and for the meaning of 'Schedule 1 cases' see PARA 1110 ante.

5 This signifies the independent or dependent territories under the sovereignty of the Crown: see COMMONWEALTH vol 13 (2009) PARA 707.

6 Ie an Order in Council made under the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante.

7 Ie in a manner prescribed by the Extradition Act 1989 Sch 1 (as amended). As to the apprehension and surrender of a fugitive criminal see Sch 1 paras 4, 5, 8 (all prospectively amended); and PARAS 1209-1212, 1215-1216 post.

8 Ibid Sch 1 para 3.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1195 Liability of fugitive criminal to surrender

NOTE 5--Any reference to a dependent territory within the meaning of the British Nationality Act 1981 is now to a British overseas territory: see the British Overseas Territories Act 2002 s 1(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(1) PERSONS LIABLE TO EXTRADITION/1196. Fugitive criminal.

1196. Fugitive criminal.

'Fugitive criminal' means, unless the context otherwise requires, any person¹ accused or convicted² of an extradition crime³ committed within the jurisdiction⁴ of any foreign state⁵ who is in or is suspected of being in some part of Her Majesty's dominions⁶. 'Fugitive criminal of a foreign state' means, unless the context otherwise requires, a fugitive criminal accused or convicted of an extradition crime within the jurisdiction of that state⁷.

1 Unless the relevant treaty or Order in Council contains express provision to the contrary, a fugitive criminal's amenability to extradition is not affected by his nationality; in particular, British subjects are in this respect in a position no different to that of aliens: *Re Galwey* [1896] 1 QB 230 at 235, DC, per Lord Russell of Killowen CJ; *R v Ganz* (1882) 9 QBD 93, DC. Properly accredited diplomats are immune from extradition: see the Diplomatic Privileges Act 1964; *R v Governor of Pentonville Prison, ex p Teja* [1971] 2 QB 274, [1971] 2 All ER 11, DC; *R v Governor of Pentonville Prison, ex p Osman (No 2)* (21 December 1988) Lexis, Enggen Library, Cases File, (1988) Times, 24 December, DC. As to the scope of state immunity see *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL.

2 'Conviction' and 'convicted' do not include or refer to a conviction which under foreign law is a conviction for contumacy: Extradition Act 1989 s 1(3), Sch 1 para 20. 'Accused person' includes a person so convicted for contumacy: Sch 1 para 20. The expression 'conviction for contumacy' includes the French conviction 'per contumace' and includes the French 'jugement par défaut' but does not include the French 'jugement iteratif défaut', which is a final conviction on surrender for which an offender would be sent to prison without further trial: see *R v Governor of Brixton Prison, ex p Caborn-Waterfield* [1960] 2 QB 498 at 510, sub nom *Re Caborn-Waterfield* [1960] 2 All ER 178 at 182 per Salmon J; approved in *R v Governor of Pentonville Prison, ex p Zezza* [1983] 1 AC 46, sub nom *Zezza v Government of Italy* [1982] 2 All ER 513, HL. See also *Athanassiadis v Government of Greece* [1971] AC 282n, [1969] 3 All ER 293, HL; *Re Sariog* (26 March 1993) Lexis, Enggen Library, Cases File, DC.

3 For the meaning of 'extradition crime' for these purposes see PARA 1197 post.

4 As to the meaning of 'jurisdiction' with respect to Schedule 1 cases see PARAS 1198, 1200 post. For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

5 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 post.

6 Extradition Act 1989 Sch 1 para 20. As to Her Majesty's dominions see PARA 1195 note 5 ante.

7 Ibid Sch 1 para 20.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1197. Extradition crime.

(2) EXTRADITION CRIMES

1197. Extradition crime.

'Extradition crime', in relation to any foreign state¹, is to be construed by reference to the Order in Council under the Extradition Act 1870² applying to that state as it had effect immediately before 27 September 1989³ and to any amendments thereafter made to that Order⁴. Each such Order in Council must be construed in the light of its own particular provisions. In general, such Orders in Council provide that the Extradition Acts 1870 to 1935⁵ apply to extradition between the United Kingdom and the relevant state. However, given the above definition of extradition crime⁶, those offences which constituted extradition crimes within the meaning of the Extradition Acts 1870 to 1935 are not inevitably extradition crimes for the purpose of each Order in Council (because the relevant Order in Council may, for example, restrict the types of offences which constitute extradition crimes as between the United Kingdom and the relevant foreign state).

A crime was an extradition crime within the meaning of the Extradition Acts 1870 to 1935, immediately before the 27 September 1989⁷, if it would constitute one of the following offences if it were committed in England or within the English jurisdiction⁸:

- 35 (1) murder, and conspiracy to murder⁹;
- 36 (2) manslaughter¹⁰;
- 37 (3) counterfeiting and altering money and uttering counterfeit or altered money¹¹;
- 38 (4) forgery, counterfeiting and altering, and uttering what is forged or counterfeited or altered¹²;
- 39 (5) crimes by bankrupts against bankruptcy laws¹³;
- 40 (6) rape¹⁴;
- 41 (7) abduction¹⁵;
- 42 (8) piracy by the law of nations¹⁶;
- 43 (9) sinking or destroying a vessel at sea, or conspiring to do so¹⁷;
- 44 (10) assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm¹⁸;
- 45 (11) revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master¹⁹;
- 46 (12) kidnapping and false imprisonment²⁰;
- 47 (13) perjury and subornation of perjury, whether under common or statute law²¹;
- 48 (14) any indictable offence under the Theft Act 1968, or any Act amending or substituted for it²²;
- 49 (15) any indictable offence²³ under the Criminal Damage Act 1971 or the unrepealed provisions of the Malicious Damage Act 1861, or any Act amending or substituted for either²⁴;
- 50 (16) any indictable offence²⁵ under the Forgery Act 1861 or any Act²⁶ amending or substituted for it²⁷;
- 51 (17) any indictable offence²⁸ under the Coinage Offences Act 1861 or any Act²⁹ amending or substituted for it³⁰;
- 52 (18) any indictable offence³¹ under the Offences against the Person Act 1861 or any Act amending or substituted for it³²;

- 53 (19) any indictable offence³³ under the laws for the time being in force in relation to bankruptcy³⁴;
- 54 (20) any indictable offence³⁵ under the Sexual Offences Act 1956 or any Act amending or substituted for it³⁶;
- 55 (21) offences committed against the Slave Trade Acts 1824 and 1873 and any enactments amending them³⁷;
- 56 (22) bribery³⁸;
- 57 (23) offences against any enactment for the time being in force relating to dangerous drugs³⁹;
- 58 (24) attempts to commit offences in connection with counterfeit currency⁴⁰;
- 59 (25) aiding, abetting, counselling or procuring suicide⁴¹;
- 60 (26) impeding the apprehension or prosecution of persons having committed extradition crimes⁴²;
- 61 (27) genocide, or conspiracy to commit genocide, and any direct and public incitement to commit genocide⁴³;
- 62 (28) cruelty to children or young persons under 16 years of age by persons having their custody, charge or care⁴⁴;
- 63 (29) indecent conduct with or towards children under the age of 14⁴⁵;
- 64 (30) conspiring to commit any offence against any enactment for the time being in force relating to dangerous drugs⁴⁶;
- 65 (31) taking or publishing indecent photographs of children⁴⁷;
- 66 (32) threat of attack on protected person⁴⁸;
- 67 (33) any offence under the Explosive Substances Act 1883⁴⁹;
- 68 (34) any indictable offence under the Firearms Act 1968⁵⁰;
- 69 (35) an offence under the Taking of Hostages Act 1982⁵¹;
- 70 (36) an offence under the Prohibition of Female Circumcision Act 1985⁵²;
- 71 (37) an offence of torture under the Criminal Justice Act 1988⁵³;
- 72 (38) an offence of financing terrorism under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989⁵⁴;
- 73 (39) offences under the Computer Misuse Act 1990⁵⁵;
- 74 (40) offences under the Drug Trafficking Offences Act 1994⁵⁶;
- 75 (41) offences under the Nuclear Material (Offences) Act 1983⁵⁷;
- 76 (42) offences under the Aviation and Maritime Security Act 1990⁵⁸;
- 77 (43) offences under the Tokyo Convention Act 1967⁵⁹;
- 78 (44) attempts to commit an extradition crime⁶⁰;
- 79 (45) any offence under the Company Securities (Insider Dealing) Act 1985⁶¹;
- 80 (46) offences under the Drug Trafficking Offences Act 1986⁶².

The foregoing list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime⁶³.

Further, in relation to a number of the states with which the United Kingdom has extradition treaties, Schedule 1 to the Extradition Act 1989⁶⁴ applies subject to the provisions of the International Convention for the Suppression of the White Slave Traffic⁶⁵, to which those states and the United Kingdom are parties. That Convention provides, inter alia, that defined acts, relating to the international traffic in prostitution must, in the laws of each contracting party, constitute extradition crimes in relation to each other such party, in accordance with their existing extradition arrangements⁶⁶.

1 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 post.

2 Ie under the Extradition Act 1870 s 2 (repealed) (see PARA 1158 ante). As to the repeal of s 2 see PARA 1194 ante.

3 Ie the date the Extradition Act 1989 came into force: see s 38(2).

4 Ibid s 1(3), Sch 1 para 20. As to the correct test to be applied in determining whether an offence is an extradition crime see: *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* [1999] 4 All ER 1, [1999] 3 WLR 620, HL (on appeal from [1999] QB 847, [1998] 3 WLR 1156, DC) (the Computer Misuse Act 1990 s 15 made offences under ss 2, 3, and conspiracy to commit them, extraditable offences; it was held that, with respect to the United States, the requirement in the Treaty between the United States of America and the United Kingdom Art III(1)(b) (see the United States of America (Extradition) Order 1976, SI 1976/2144, Sch 1) that the offence be extraditable under United Kingdom law can be satisfied by an appropriate provision in an Act of Parliament, even if that provision does not purport to alter either the Treaty or the Order). Whereas in *R v Secretary of State for the Home Department, ex p Gilmore* [1999] QB 611, [1998] 1 All ER 264, DC, it was held that, under the Extradition Act 1989, Orders in Council are still limited by Extradition Act 1870, so that an offence cannot be an extradition crime unless it is found in the Extradition Act 1870 Sch 1 (repealed), it was held in *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* supra, DC, that, under the Extradition Act 1989, Orders in Council are not limited by the Extradition Act 1870, so that an extradition crime can include an offence not found within the Extradition Act 1870, Sch 1 (repealed). Whether an offence of conspiracy to commit a particular offence is an extradition crime depends on whether the description of that particular offence in the Extradition Act 1870 Sch 1 (repealed) is general or specific; a specific description, such as a description referring to 'offences under' a particular Act, excludes an offence of conspiracy: *R v Secretary of State for the Home Department, ex p Gilmore* supra.

See also *R v Governor of Pentonville Prison, ex p Alves* [1993] AC 284, sub nom *Alves v DPP* [1992] 4 All ER 787, HL; *R v Chief Metropolitan Stipendiary Magistrate, ex p Secretary of State for the Home Department* [1989] 1 All ER 151, [1988] 1 WLR 1204, DC, (where the principle that the courts would not aid a foreign state to recover tax could not be incorporated into the Extradition Act 1870 nor extended to cover a criminal offence that was an extradition crime committed within a revenue context); *Re Nielsen* [1984] AC 606, sub nom *Government of Denmark v Nielsen* [1984] 2 All ER 81, HL (there is no requirement of 'substantial similarity' of foreign and English offences, so that the magistrate should not hear evidence concerning the criminal law of the foreign state, unless the relevant treaty contains provisions that limit surrender to persons accused of conduct that constitutes a crime of a particular kind (for example, one that attracts specified minimum penalties)); *United States Government v McCaffery* [1984] 2 All ER 570, [1984] 1 WLR 867, HL.

5 As to the Extradition Acts 1870 to 1935 see PARA 1102 note 7 ante.

6 See the text and notes 1-4 supra.

7 See note 3 supra.

8 See the Extradition Act 1870 s 26, Sch 1, which was repealed by the Extradition Act 1989 s 37(1), Sch 2.

9 Extradition Act 1870 Sch 1 (repealed). As to causing death by reckless driving see *Jennings v United States Government* [1982] 3 All ER 104 at 110, HL.

10 Extradition Act 1870 Sch 1 (repealed). See also note 9 supra.

11 Ibid Sch 1 (repealed). See also the text to notes 12, 27, 30, 40 infra.

12 Ibid Sch 1 (repealed). See also the text to notes 11 supra, 27, 30, 40 infra.

13 Ibid Sch 1 (repealed). See also the text to note 34 infra.

14 Ibid Sch 1 (repealed). See also the text to note 36 infra.

15 Ibid Sch 1 (repealed).

16 Ibid Sch 1 (repealed).

17 Ibid Sch 1 (repealed).

18 Ibid Sch 1 (repealed).

19 Ibid Sch 1 (repealed).

20 Ibid Sch 1; Extradition Act 1873 s 8, Schedule (both repealed).

21 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (both repealed).

22 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (amended by the Theft Act 1968 s 33(2), Sch 2 Pt II) (all repealed). The amendment effected by the Theft Act 1968 does not affect the operation of this list of offences by reference to the law of a British possession: s 33(4).

23 This item does not include any offence already included in the Extradition Act 1870 Sch 1 (repealed).

24 Ibid Sch 1; Extradition Act 1873 Schedule (amended by the Criminal Damage Act 1971 s 11(4)) (all repealed).

25 See note 23 *supra*.

26 Much of the Forgery Act 1861 was consolidated in the Forgery Act 1913, which has been repealed: see now the Forgery and Counterfeiting Act 1981 Pt I (ss 1-13) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 *et seq*.

27 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (both repealed). See also the text to notes 11-12 *supra*.

28 See note 23 *supra*.

29 The Coinage Offences Act 1861 was repealed and replaced by the Coinage Offences Act 1936, which has also been repealed: see now the Forgery and Counterfeiting Act 1981 Pt II (ss 14-28) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 544 *et seq*.

30 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (both repealed). See also the text to notes 11-12 *supra*, and the text to note 40 *infra*.

31 See note 23 *supra*.

32 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (both repealed).

33 See note 23 *supra*.

34 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (both repealed). See also the text to note 13 *supra*.

35 See note 23 *supra*.

36 Extradition Act 1870 Sch 1; Extradition Act 1873 Schedule (amended by the Sexual Offences Act 1956 s 48, Sch 3) (all repealed).

37 Extradition Act 1870 Sch 1; Slave Trade Act 1873 s 27 (both repealed).

38 Extradition Act 1870 Sch 1; Extradition Act 1906 s 1 (both repealed).

39 Extradition Act 1870 Sch 1; Extradition Act 1932 s 1 (both repealed). See also the text to note 46 *infra*.

40 Extradition Act 1870 Sch 1; Counterfeit Currency (Convention) Act 1935 s 4 (both repealed). These provisions made extraditable, so far as they are not made extraditable by any provision previously mentioned, the following attempted crimes: (1) attempts to forge bank notes, attempts to utter forged bank notes, and attempts to commit, in relation to bank notes, any indictable offences under the Forgery Act 1913 or any Act amending or substituted for that Act; (2) attempts to counterfeit or alter money, attempts to utter counterfeited or altered money, and attempts to commit any indictable offence under the Coinage Offences Act 1936 or under any Act amending or substituted for that Act. See also the text to notes 11-12, 30 *supra*.

41 Extradition Act 1870 Sch 1; Suicide Act 1961 s 2(3), Sch 1 Pt II (both repealed).

42 Extradition Act 1870 Sch 1; Criminal Law Act 1967 s 4(6) (both repealed).

43 Extradition Act 1870 Sch 1; Genocide Act 1969 s 2(1)(a) (both repealed).

44 Extradition Act 1870 Sch 1; Children and Young Persons Act 1969 s 60(1)(a) (both repealed), applying the Children and Young Persons Act 1933 s 1 (as amended).

45 Extradition Act 1870 Sch 1; Children and Young Persons Act 1969 s 60(1)(a) (both repealed), applying the Indecency with Children Act 1960 s 1 (as amended).

- 46 Extradition Act 1870 Sch 1; Misuse of Drugs Act 1971 s 33 (both repealed). See also the text to note 39 *supra*.
- 47 Extradition Act 1870 Sch 1; Protection of Children Act 1978 s 1(6) (both repealed).
- 48 Extradition Act 1870 Sch 1; Internationally Protected Persons Act 1978 s 3(1) (both repealed). For the offence of threat of attack on a protected person mentioned in the text see s 1(3)(a).
- 49 Extradition Act 1870 Sch 1; Suppression of Terrorism Act 1978 s 3(1) (both repealed).
- 50 Extradition Act 1870 Sch 1; Suppression of Terrorism Act 1978 s 3(1) (both repealed).
- 51 Extradition Act 1870 Sch 1 (repealed); Extradition (Taking of Hostages) Order 1997, SI 1997/1767. For the offence of taking of hostages mentioned in the text see the Taking of Hostages Act 1982 s 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 468.
- 52 Extradition Act 1870 Sch 1; Prohibition of Female Circumcision Act 1985 s 3(1)(a) (both repealed). For the offence of female circumcision mentioned in the text see s 1 (as amended). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 157 et seq.
- 53 Extradition Act 1870 Sch 1 (repealed); Extradition (Torture) Order 1997, SI 1997/1769. For the offence of torture mentioned in the text see the Criminal Justice Act 1988 s 134; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 160. See also the Extradition Act 1989 s 38(4); *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL.
- 54 Extradition Act 1870 Sch 1; Prevention of Terrorism (Temporary Provisions) Act 1989 s 25(1), Sch 8 para 1 (both repealed). For the offence of financial assistance for terrorism mentioned in the text see Pt III (ss 9-13) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 390 et seq.
- 55 Extradition Act 1870 Sch 1 (repealed); Computer Misuse Act 1990 s 15. See also *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* [1999] QB 847, [1998] 3 WLR 1156, DC; on appeal [1999] 4 All ER 1, [1999] 3 WLR 620, HL. For the offences of unauthorised access with intent to commit or facilitate the commission of further offences and the unauthorised modification of computer material mentioned in the text see the Computer Misuse Act 1990 ss 2, 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 359-360.
- 56 Extradition Act 1870 Sch 1 (repealed); Extradition (Drug Trafficking) Order 1997, SI 1997/1762. For the offence of drug trafficking mentioned in the text see the Drug Trafficking Act 1994; the Criminal Justice (International Co-operation) Act 1990 s 22. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 784 et seq.
- 57 Extradition Act 1870 Sch 1 (repealed); Nuclear Material (Offences) Act 1983 s 5(1); Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765.
- 58 Extradition Act 1870 Sch 1 (repealed); Aviation and Maritime Security Act 1990 s 49; Extradition (Safety of Maritime Navigation) Order 1997, SI 1997/1766.
- 59 Extradition Act 1870 Sch 1 (repealed); Extradition (Tokyo Convention) Order 1997, SI 1997/1768. For the application of the criminal law to aircraft mentioned in the text see the Tokyo Convention Act 1967 s 1 (repealed).
- 60 Extradition Act 1870 Sch 1; Suppression of Terrorism Act 1978 s 3(1)(c) (both repealed). Whether an offence of conspiracy to commit a particular offence is an extradition crime depends on whether the description of that particular offence in the Extradition Act 1870 Sch 1 (repealed) is general or specific; a specific description, such as a description referring to 'offences under' a particular Act, excludes an offence of conspiracy: *R v Secretary of State for the Home Department, ex p Gilmore* [1999] QB 611, [1998] 1 All ER 264, DC.
- 61 Extradition Act 1870 Sch 1; Criminal Justice Act 1988 Sch 1 para 4 (both repealed); Extradition Act 1989 s 38(4).
- 62 Extradition Act 1870 Sch 1; Criminal Justice Act 1988 Sch 1 para 4 (both repealed); Extradition Act 1989 s 38(4). For the offence of assisting another to retain the benefit of drug trafficking mentioned in the text see the Drug Trafficking Offences Act 1986 s 24 (repealed).
- 63 Extradition Act 1870 Sch 1 (repealed); *R v Dix* (1902) 18 TLR 231, DC; *R v Governor of Brixton Prison, ex p Stallmann* [1912] 3 KB 424, DC.

64 le the Extradition Act 1989 Sch 1 (as amended).

65 le the International Convention for the Suppression of the White Slave Traffic (Paris, 4 May 1910; TS 20 (1912); Cd 6326). See further PARA 1159 ante.

66 See *ibid* Arts 1, 2, 5. See further PARA 1159 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1197 Extradition crime

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1198. Jurisdiction.

1198. Jurisdiction.

Although there is no comprehensive statutory definition of jurisdiction for Schedule 1 cases¹, there are particular statutory provisions relating to jurisdiction². The two competing meanings of jurisdiction are that: (1) jurisdiction is to be equated with territory³; or (2) jurisdiction is to be given its meaning in English law⁴.

1 For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

2 For particular statutory provisions relating to jurisdiction see PARA 1200 post.

3 *United States Government v McCaffery* [1984] 2 All ER 570 at 575, [1984] 1 WLR 867 at 872, HL, per Lord Diplock; *Re Rees* [1986] AC 937 at 955, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321 at 327, HL, per Lord Mackay; *Schtraks v Government of Israel* [1964] AC 556 at 579, [1962] 3 All ER 529 at 532, HL, per Lord Reid.

4 *R v Governor of Pentonville Prison, ex p Naghdi* [1990] 1 All ER 257 at 265, sub nom *Re Naghdi* [1990] 1 WLR 317 at 325-326, DC, per Woolf LJ; *Liangsirprasert v Government of the United States of America* [1991] 1 AC 225, [1990] 2 All ER 866, PC.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1198 Jurisdiction

TEXT AND NOTES 3, 4--In view of the fact that a court must construe a statute or a treaty so that proper effect is given to its provisions, that most countries exercise some degree of extra-territorial criminal jurisdiction and that national borders are no impediment to international terrorists and other criminals, and taking into consideration that piracy by law of nations is included as an extradition crime, jurisdiction includes extra-territorial jurisdiction and cannot be equated to territory: *Re Al-Fawwaz*; *Re Eiderous* [2001] UKHL 69, [2002] 1 All ER 545 (*Re Rees* [1986] AC 937, [1986] 2 All ER 321; and *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL, doubted). As to the applicability of the guidance document relating to concurrent jurisdiction between the United Kingdom and the United States of America in criminal cases see *R (on the application of Ahsan) v DPP*; *Ahsan v Government of the United States of America*; *Tajik v Government of the United States of America* [2008] EWHC 666 (Admin), [2008] All ER (D) 149 (Apr).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1199. Crimes committed at sea or on board an aircraft.

1199. Crimes committed at sea or on board an aircraft.

Where the crime in respect of which the surrender of a fugitive criminal¹ is sought was committed on board any vessel or hovercraft on the high seas which comes into any port of the United Kingdom²: (1) Schedule 1 to the Extradition Act 1989³ is to be construed as if references to any stipendiary magistrate⁴ were substituted for the references to the metropolitan magistrate⁵; (2) the criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime⁶; (3) if the fugitive criminal is apprehended on a warrant issued without the order of the Secretary of State⁷, he is to be brought before the stipendiary magistrate, sheriff or resident magistrate who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port⁸. This jurisdiction conferred on a stipendiary magistrate, sheriff or resident magistrate, is to be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the metropolitan magistrate⁹.

The above provisions¹⁰ have effect where a person's surrender is sought in respect of a crime committed on board an aircraft in flight which lands in the United Kingdom, but as if for references to the port where the vessel lies there were substituted references to the place at which the person whose surrender is sought is disembarked¹¹. For the purposes of the application of Schedule 1 to the Extradition Act 1989¹² to crimes committed on board an aircraft in flight, any aircraft registered in a country which is for the time being certified to be a relevant country¹³ is at any time while that aircraft is in flight deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country¹⁴.

For the purposes of Schedule 1 to the Extradition Act 1989¹⁵ any act, wherever committed, which (a) is an offence under any of the provisions of Part I of the Aviation Security Act 1982¹⁶ or an attempt to commit such an offence¹⁷; and (b) is an offence against the law of any state in relation to which Schedule 1 to the Extradition Act 1989 has effect, is to be deemed to be an offence committed within the jurisdiction of that state¹⁸.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

4 As to the role of the magistrate see PARA 1115 ante.

5 Extradition Act 1989 Sch 1 para 13(1)(a). This does not apply to the reference in Sch 1 para 11 (prospectively amended) (see PARA 1210 post). For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 post.

As from a day to be appointed, Sch 1 (as amended) is to be construed as if references to the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him were to any District Judge (Magistrates' Courts) and those references and the references to a District Judge (Magistrates' Courts) (apart from that in Sch 1 para 11) included any sheriff in Scotland and any resident magistrate in Northern Ireland: see Sch 1 para 13(1)(a) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (6)(a)). At the date at which this volume states the law no such day had been appointed. See also PARA 1115 ante.

6 Extradition Act 1989 Sch 1 para 13(1)(b).

7 As to the Secretary of State see PARA 1116 ante.

8 Extradition Act 1989 Sch 1 para 13(1)(c). As from a day to be appointed, the reference to 'the stipendiary magistrate' in Sch 1 para 13(1)(c) is to be replaced with a reference to 'any District Judge (Magistrates' Courts)': see Sch 1 para 13(1)(c) (prospectively amended by the Access to Justice Act 1999 Sch 11 paras 31, 36(1), (6) (b)). At the date at which this volume states the law no such day had been appointed.

9 Extradition Act 1989 Sch 1 para 13(2). As from a day to be appointed, Sch 1 para 13(2) is to be repealed by the Access to Justice Act 1999 s 106, Sch 11 paras 31, 36(1), (6)(c), Sch 15 Pt V Table (3). At the date at which this volume states the law no such day had been appointed.

10 Ie the Extradition Act 1989 Sch 1 para 13 (as amended).

11 Ibid Sch 1 para 14(2).

12 Ie ibid Sch 1 (as amended).

13 Ie a country specified in an Order in Council made by virtue of the Civil Aviation Act 1982 s 105 (as amended) to be a Convention country as defined in s 105(1).

14 Extradition Act 1989 Sch 1 para 14(1). The provisions of the Civil Aviation Act 1982 s 92(4), (5) (as amended) (see AIR LAW vol 2 (2008) PARA 619) apply for the purposes of the Extradition Act 1989 Sch 1 para 14 as they apply for the purposes of the Civil Aviation Act 1982 s 92 (as amended): Extradition Act 1989 Sch 1 para 14(3).

15 See note 12 supra.

16 Ie other than the Aviation Security Act 1982 ss 4, 7 (as amended) (see AIR LAW vol 2 (2008) PARA 630).

17 Ie or would be such an offence or attempt but for ibid ss 1(2), 2(4), or 3(5) or (6) (see AIR LAW vol 2 (2008) PARAS 624, 628-629).

18 Extradition Act 1989 Sch 1 para 14(4).

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1200. Deemed extension of jurisdiction of foreign states.

1200. Deemed extension of jurisdiction of foreign states.

For the purposes of Schedule 1 to the Extradition Act 1989¹ any act, wherever committed, which constitutes any of the offences² in question and an offence against the law of any state in relation to which the provisions have effect is to be deemed to be an offence committed within the jurisdiction of that state³. Every colony⁴, dependency, and constituent part of a foreign state, and every vessel of that state, is (except where specifically mentioned as distinct) to be deemed to be within the jurisdiction of and to be part of such foreign state⁵.

¹ I.e. the Extradition Act 1989 s 1(3), Sch 1 (as amended).

² I.e. (1) an offence mentioned in the Internationally Protected Persons Act 1978 s 1(1)(a) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 477) which is committed against a protected person within the meaning of that provision; (2) an offence mentioned in s 1(1)(b) which is committed in connection with such an attack as is so mentioned; (3) an attempt to commit an offence mentioned in head (1) or head (2) supra; (4) an offence under s 1(3); (5) an offence under the Taking of Hostages Act 1982 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 468) or an attempt to commit such an offence; (6) an offence mentioned in the Nuclear Material (Offences) Act 1983 s 1(1)(a)-(d) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1583) which is committed by doing an act in relation to or by means of nuclear material, as defined in that Act; (7) an offence under s 2; (8) an attempt to commit an offence mentioned in head (6) or head (7) supra; (9) torture; (10) a drug trafficking offence within the meaning of the Drug Trafficking Act 1994; (11) an offence to which the Criminal Justice (Scotland) Act 1987 s 1 (repealed) (see now the Proceeds of Crime (Scotland) Act 1995 s 1) relates; (12) an offence under the Aviation and Maritime Security Act 1990 ss 1, 9, 10, 11, 12 or 13 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1210 et seq) or an attempt to commit such an offence; (13) a drug trafficking offence within the meaning of the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9); (14) an offence mentioned in the United Nations Personnel Act 1997 s 1(2) which is committed against a UN worker within the meaning of that Act; (15) an offence mentioned in s 2(2) which is committed in connection with such an attack as is mentioned in s 2(1); (16) an offence under s 3; or (17) an attempt to commit an offence mentioned in head (14), head (15) or head (16) supra: Extradition Act 1989 Sch 1 para 15 (amended by the Criminal Justice (International Co-operation) Act 1990 ss 22(2), 31(3), Sch 5; the Aviation and Maritime Security Act 1990 s 53, Sch 3 para 10, Sch 4; the Drug Trafficking Act 1994 s 65, Sch 1 para 24; the United Nations Personnel Act 1997 s 6(3); the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588, art 38(1), Sch 2; and the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299, art 57(1), Sch 3 para 9). See also INTERNATIONAL RELATIONS LAW.

³ Extradition Act 1989 Sch 1 para 15 (as amended: see note 2 supra).

⁴ For the meaning of 'colony' see PARA 1106 note 6 ante. For the purposes of *ibid* Sch 1 (as amended), unless the context otherwise requires, 'colony' includes colonies under one legislature: Sch 1 para 20.

⁵ *Ibid* Sch 1 para 19.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1201. Application to colonies.

1201. Application to colonies.

Schedule 1 to the Extradition Act 1989¹, when applied by Order in Council², unless otherwise provided by such Order, extends to every colony³ in the same manner as if throughout that Schedule a reference to the colony were substituted for the United Kingdom⁴ or England and Wales, as the case may require, but with the following modifications, namely⁵: (1) the requisition for the surrender of a fugitive criminal⁶ who is in or suspected of being in a colony may be made to the governor⁷ of that colony by any person recognised by that governor as a consular representative, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state⁸ on behalf of which the requisition is made) as the governor of such colony or dependency⁹; (2) no warrant of the Secretary of State¹⁰ is required, and all powers vested in or acts authorised or required to be done under Schedule 1 to the Extradition Act 1989 by the metropolitan magistrate¹¹ and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the colony alone¹²; (3) a judge of any court, exercising in the colony the like powers as the High Court¹³ exercises in England and Wales, may exercise the power of discharging a criminal¹⁴ when not conveyed within two months out of such British possession¹⁵.

1 le the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 le an Order in Council under the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante.

3 For the meaning of 'colony' see PARA 1106 note 6 ante. See also PARA 1200 note 4 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Extradition Act 1989 Sch 1 para 16.

6 For the meaning of 'fugitive criminal' see PARA 1196 ante.

7 'Governor', in relation to any British possession, includes the officer for the time being administering the government of that possession: Interpretation Act 1978 s 5, Sch 1.

8 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante.

9 Extradition Act 1989 Sch 1 para 16(a).

10 As to the Secretary of State see PARA 1116 ante.

11 'Metropolitan magistrate' means the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate: Extradition Act 1989 ss 8(2), 35(1). 'Designated metropolitan magistrate' means a metropolitan stipendiary magistrate designated for the purposes of the Extradition Act 1989 by the Lord Chancellor: ss 8(2), 35(1). As from a day to be appointed, s 8(2), and the definitions of 'metropolitan magistrate' and 'designated metropolitan magistrate' in s 35(1) are to be repealed by the Access to Justice Act 1999 s 106, Sch 15 Pt V(3). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

12 Extradition Act 1989 Sch 1 para 16(b).

13 For the meaning of 'High Court' see PARA 1174 note 2 ante.

14 As to the discharge of persons apprehended if not conveyed out of the United Kingdom within two months see the Extradition Act 1989 Sch 1 para 10; and PARA 1258 post.

15 Ibid Sch 1 para 16(c). 'British possession' means any part of Her Majesty's dominions outside the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one British possession: Interpretation Act 1978 Sch 1.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(2) EXTRADITION CRIMES/1202. Application of Schedule 1 to the Channel Islands and the Isle of Man.

1202. Application of Schedule 1 to the Channel Islands and the Isle of Man.

Schedule 1 to the Extradition Act 1989¹ (except so far as relates to the execution of warrants in the Channel Islands) extends to the Channel Islands and the Isle of Man in the same manner as if they were part of the United Kingdom²; and the royal courts of the Channel Islands are respectively authorised and required to register that Schedule³.

1 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Extradition Act 1989 Sch 1 para 18.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(i) Offences of a Political Character etc/A. SCOPE OF THE RESTRICTION/1203. Offences of a political character, race, religion, nationality and political opinions.

(3) RESTRICTIONS ON SURRENDER

(i) Offences of a Political Character etc

A. SCOPE OF THE RESTRICTION

1203. Offences of a political character, race, religion, nationality and political opinions.

A fugitive criminal¹ may not be surrendered if the offence in respect of which his surrender is demanded is one of a political character², or if he proves to the satisfaction of the metropolitan magistrate³ or the court before whom he is brought on habeas corpus⁴, or to the Secretary of State⁵, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character⁶. In relation to a requisition⁷ which is made by a relevant country⁸, a fugitive criminal may not be surrendered if he proves to the satisfaction of the metropolitan magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State that the requisition for his surrender has in fact been made with a view to try or punish him on account of his race, religion, nationality or political opinions, or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions⁹.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 As to the meaning of 'political character' for the purposes of the Extradition Act 1989 Pt III (ss 7-17) (as amended) and s 1(3), Sch 1 (as amended) see PARAS 1175-1178 ante.

3 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

4 As to an application for habeas corpus see the Extradition Act 1989 Sch 1 para 8 (prospectively amended); and PARA 1207 post.

5 As to the Secretary of State see PARA 1116 ante.

6 Extradition Act 1989 Sch 1 para 1(1), (2). As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 1(2) is to be replaced with a reference to 'District Judge (Magistrates' Courts)': see Sch 1 para 1(2) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

7 Ie under the Extradition Act 1989 Sch 1 (as amended).

8 Ie a country to which ibid s 24(2) (see PARA 1176 ante) applies.

9 Ibid s 24(4). As from a day to be appointed, the reference to 'metropolitan magistrate' in s 24(4) is to be replaced with a reference to 'District Judge (Magistrates' Courts)': see s 24(4) (prospectively amended by the Access to Justice Act 1999 Sch 11 paras 31, 35). At the date at which this volume states the law no such day had been appointed.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(i) Offences of a Political Character etc/B. POLITICAL CRIMES/1204. Political crimes.

B. POLITICAL CRIMES

1204. Political crimes.

Although there is no statutory definition of an 'offence of a political character', principles which can be applied in determining whether an offence is political have emerged through case law¹. There are, however, statutory limitations on the definition of 'political character'².

1 See PARA 1175 ante.

2 See PARAS 1176-1178 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(ii) Other Restrictions on Surrender/1205. Specialty.

(ii) Other Restrictions on Surrender

1205. Specialty.

A fugitive criminal¹ may not be surrendered to a foreign state² unless provision is made by the law of that state, or by arrangement, that the fugitive criminal must not, until he has been restored or had an opportunity of returning to Her Majesty's dominions³, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime⁴ proved by the facts on which the surrender is grounded⁵. It follows that a person may be tried in the foreign state for any other crime provable by the facts upon which his surrender is grounded⁶, provided it is an extradition crime⁷. Where a fugitive criminal is charged with two offences, one of which is not an extradition crime, the magistrate⁸ must make it clear that the crime in respect of which the accused is committed for extradition is that which is an extradition crime⁹. The court assumes that a foreign government will honour its obligation under any law or arrangement¹⁰.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante.

3 As to Her Majesty's dominions see PARA 1195 note 5 ante.

4 For the meaning of 'extradition crime' for these purposes see PARA 1197 ante.

5 Extradition Act 1989 s 1(3), Sch 1 para 1(3). For an example of the application of the specialty provision of the United States Treaty see *Re Forwell* [1996] Crim LR 119, (1994) Times, 25 October, DC. As to cases on specialty under the Extradition Act 1989 Pt III (ss 7-17) (as amended) see PARA 1181 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

6 Cf *R v Corrigan* [1931] 1 KB 527, CCA, where a fugitive who claimed to have been extradited from France to England on charges of false pretences was indicted for fraudulent conversion on the same facts. 'Crimes provable by the facts on which the surrender is grounded' means such of the crimes as may be disclosed by the facts alleged in the extradition proceedings: *R v Aubrey-Fletcher, ex p Ross-Munro* [1968] 1 QB 620, [1968] 1 All ER 99, DC.

7 *R v Smith* (1975) 120 Sol Jo 63, [1976] Crim LR 192, CA.

8 As to the role of the magistrate see PARA 1115 ante.

9 *R v Dix* (1902) 18 TLR 231, DC. See also *Ex p Piot* (1883) 15 Cox CC 208 at 216 per Pollock B; *Re Bluhm* [1901] 1 KB 764.

10 *Royal Government of Greece v Governor of Brixton Prison* [1971] AC 250 at 279, [1969] 3 All ER 1337 at 1340, HL, per Lord Morris of Borth-y-Gest.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(ii) Other Restrictions on Surrender/1206. Criminal proceedings in the United Kingdom.

1206. Criminal proceedings in the United Kingdom.

A fugitive criminal¹ who has been accused of some offence within United Kingdom² jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction³ in the United Kingdom, must not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise, or unless an order is made in respect of the offence to lie on the file⁴.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 For the meaning of 'conviction' see PARA 1196 note 2 ante.

4 Extradition Act 1989 s 1(3), Sch 1 para 1(4). See also *R v Governor of Brixton Prison, ex p Van Der Auwera* [1907] 2 KB 157, DC.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(ii) Other Restrictions on Surrender/1207. Fifteen day rule.

1207. Fifteen day rule.

A fugitive criminal¹ may not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender².

¹ For the meaning of 'fugitive criminal' see PARA 1196 ante.

² Extradition Act 1989 s 1(3), Sch 1 para 1(5). If the metropolitan magistrate commits a fugitive criminal to prison, he must inform the criminal that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of habeas corpus: Sch 1 para 8(1). As from a day to be appointed, the reference to metropolitan magistrate in Sch 1 para 8(1) is to be replaced with a reference to 'District Judge (Magistrates' Courts)': see Sch 1 para 8(1) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante. As to the writ of habeas corpus in extradition cases see PARAS 1217-1228 post.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(3) RESTRICTIONS ON SURRENDER/(ii) Other Restrictions on Surrender/1208. Autrefois acquit and convict.

1208. Autrefois acquit and convict.

There is no express provision¹ restricting surrender in cases of autrefois acquit and convict. However, as the magistrate² before whom the fugitive criminal is brought has the same powers³ as he would if the proceedings were the summary trial of an information against the fugitive for an offence committed in England and Wales⁴, the magistrate has a duty to discharge if the plea of autrefois acquit or convict is made out⁵.

1 le in the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 As to the role of the magistrate see PARA 1115 ante.

3 le under the Extradition Act 1989 Sch 1 (as amended).

4 See *Atkinson v United States Government* [1971] AC 197 at 232, [1969] 3 All ER 1317 at 1322, HL, per Lord Reid.

5 See *Atkinson v United States Government* [1971] AC 197 at 231, [1969] 3 All ER 1317 at 1321, HL, per Lord Reid. See also the Extradition Act 1989 Sch 1 para 7(1); and PARA 1213 post. As to autrefois acquit and convict see also PARA 1180 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1209. Requisition for surrender.

(4) PROCEDURE

1209. Requisition for surrender.

A requisition for the surrender of a fugitive criminal¹ of any foreign state² who is in or suspected of being in the United Kingdom³, must be made to the Secretary of State⁴ by some person recognised by the Secretary of State as a diplomatic or consular representative of that foreign state⁵. The Secretary of State has a discretion as to whether to launch the proceedings⁶. There is no requirement that the requisition should identify the English equivalent of the foreign offence alleged against the person sought⁷. The existence of a requisition is a condition precedent to a valid extradition. The question as to whether the court has jurisdiction to inquire into the validity of the requisition is not settled⁸.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante. For the meaning of 'fugitive criminal of a foreign state' see PARA 1196 ante.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 As to the Secretary of State see PARA 1116 ante.

5 Extradition Act 1989 s 1(3), Sch 1 para 4(1). This provision is equivalent to s 7(1) (as amended): see PARA 1184 ante. In relation to requests for extradition from the United States there are further requirements: see the United States of America (Extradition) Order 1976, SI 1976/2144. This specifies the documents which are required to accompany the request as well as the manner in which they should be authenticated: see Sch 1 Art VII.

6 See PARA 1210 post.

7 *Re Treitz* (20 December 1985) Lexis, Enggen Library, Cases File, DC.

8 *Re Treitz* (20 December 1985) Lexis, Enggen Library, Cases File, DC.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1210. Order to proceed.

1210. Order to proceed.

The Secretary of State¹ may by order² signify to a metropolitan magistrate³ that a requisition for the surrender of a fugitive criminal⁴ of any foreign state⁵ has been made, and require him to issue his warrant⁶ for the apprehension of the fugitive criminal⁷. If the Secretary of State is of the opinion that the offence is one of a political character, he may, if he thinks fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted⁸ of such offence to be discharged from custody⁹. There must be grounds on which the Secretary of State could reasonably be satisfied that the requisition falls within the terms of the extradition arrangements, that the offence in respect of which his return is sought is an extradition crime¹⁰, and that the documents have been supplied in the proper manner¹¹.

Supplemental orders may be made on the foot of the same requisition, even if the fugitive has been discharged in the meantime¹². The further order may include crimes already disclosed with the requisition and supporting documents and not previously specified by the Secretary of State¹³.

1 As to the Secretary of State see PARA 1116 ante.

2 As to the form of orders see the Extradition Act 1989 s 28 (as amended); and PARA 1193 ante.

3 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

4 For the meaning of 'fugitive criminal' see PARA 1196 ante. As to requisition for surrender see PARA 1209 ante.

5 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante. For the meaning of 'fugitive criminal of a foreign state' see PARA 1196 ante.

6 'Warrant', in the case of any foreign state, includes any judicial document authorising the arrest of a person accused of crime: Extradition Act 1989 s 1(3), Sch 1 para 20. As to the form of warrants see s 28 (as amended); and PARA 1193 ante. As to the issue of warrants see Sch 1 para 5 (prospectively amended); and PARA 1211 post. The warrant of the metropolitan magistrate issued in pursuance of Sch 1 (as amended) may be executed in any part of the United Kingdom in the same manner as if it had been originally issued or subsequently endorsed by a justice of the peace having jurisdiction in the place where the same is executed: Sch 1 para 11. As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 11 is to be replaced by a reference to 'District Judge (Magistrates' Courts)': see Sch 1 para 11 (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante. For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

7 Extradition Act 1989 Sch 1 para 4(2). As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 4(2) is to be replaced by a reference to 'the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him': see Sch 1 para 4(2) (prospectively amended by the Access to Justice Act 1999 Sch 11 paras 31, 36(1), (3)). At the date at which this volume states the law no such day had been appointed.

The requirement to issue a warrant under the Extradition Act 1989 Sch 1 para 4(2) is the equivalent to an authority to proceed under s 7 (as amended): see PARAS 1184-1186 ante. The wording may be different but there is no material difference between them.

8 For the meaning of 'convicted' see PARA 1196 note 2 ante.

9 Extradition Act 1989 Sch 1 para 4(3). As to restrictions on return see PARAS 1174, 1179-1183 ante. See also PARA 1190 text and notes 35-40 ante.

10 For the meaning of 'extradition crime' for these purposes see PARA 1197 ante.

11 As to whom the requisition should be made see the Extradition Act 1989 Sch 1 para 4(1); and PARA 1209 ante.

12 *Government of the United States v Bowe* [1990] 1 AC 500 at 527, [1989] 3 All ER 315 at 328-329, PC; *Re Rees* [1986] AC 937 at 961, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321 at 331, HL, per Lord Mackay of Clashfern.

13 *Government of the United States v Bowe* [1990] 1 AC 500 at 527, [1989] 3 All ER 315 at 328-329, PC; *Re Rees* [1986] AC 937 at 961, sub nom *Rees v Secretary of State for the Home Department* [1986] 2 All ER 321 at 331, HL, per Lord Mackay of Clashfern.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1211. Warrant.

1211. Warrant.

A warrant¹ for the apprehension of a fugitive criminal², whether accused or convicted³ of a crime, who is in or suspected of being in the United Kingdom⁴, may be issued⁵ by a metropolitan magistrate⁶ on receipt of the order of the Secretary of State⁷, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England or Wales⁸.

1 For the meaning of 'warrant' see PARA 1210 note 6 ante. As to the form of warrants see the Extradition Act 1989 s 28 (as amended); and PARA 1193 ante. As to the issue of provisional warrants see PARA 1212 post. As to the execution of warrants see Sch 1 para 11 (prospectively amended); and PARA 1210 ante.

2 For the meaning of 'fugitive criminal' see PARA 1196 ante.

3 For the meaning of 'convicted' see PARA 1196 note 2 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Extradition Act 1989 Sch 1 para 5(1).

6 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

7 As to the Secretary of State see PARA 1116 ante. As to an order of the Secretary of State see the Extradition Act 1989 Sch 1 para 4(2) (prospectively amended); and PARA 1210 ante.

8 Ibid Sch 1 para 5(1)(a). As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 5(1)(a) is to be replaced with a reference to 'the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him': see Sch 1 para 5(1)(a) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (4)(a)). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1212. Provisional warrant.

1212. Provisional warrant.

A warrant¹ for the apprehension of a fugitive criminal², whether accused or convicted³ of crime, who is in or suspected of being in the United Kingdom⁴, may be issued⁵, in the absence of an order to proceed⁶, by a metropolitan magistrate⁷ or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction⁸. Any person issuing a warrant⁹ without an order of the Secretary of State¹⁰ must forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to the Secretary of State, who may if he thinks fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged¹¹.

A fugitive criminal, when apprehended on a warrant issued without the order of the Secretary of State, must be brought before some person having power to issue a warrant, who must by warrant order him to be brought and the prisoner must accordingly be brought before a metropolitan magistrate¹². A fugitive criminal apprehended on a warrant issued without the order of the Secretary of State must be discharged by the metropolitan magistrate, unless the metropolitan magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from the Secretary of State an order signifying that a requisition has been made for the surrender of such criminal¹³. In fixing the time within which he must receive the order from the Secretary of State, he is not limited to the period of time which may apply to the submission of the requisition under relevant treaty arrangements¹⁴. The correct procedure is for the magistrate to fix a date on which the prisoner is to be discharged unless he has by that date received the order to proceed from the Secretary of State and, if no such order is received by him, to have the prisoner brought before him and discharged on that date¹⁵. He may be re-arrested once the order has been received¹⁶.

1 For the meaning of 'warrant' see PARA 1210 note 6 ante. As to the form of warrants see the Extradition Act 1989 s 28 (as amended); and PARA 1193 ante. As to the issue of warrants see s 1(3), Sch 1 para 5 (prospectively amended); and PARA 1211 ante. As to the execution of warrants see Sch 1 para 11 (prospectively amended); and PARA 1210 ante.

2 For the meaning of 'fugitive criminal' see PARA 1196 ante.

3 For the meaning of 'convicted' see PARA 1196 note 2 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Extradition Act 1989 Sch 1 para 5(1).

6 As to an order to proceed see PARA 1210 ante.

7 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

8 Extradition Act 1989 Sch 1 para 5(1)(b). As from a day to be appointed, the reference to a metropolitan magistrate in Sch 1 para 5(1)(b) is to be repealed by the Access to Justice Act 1999 s 106, Sch 15 Pt V(3). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

9 Ie under the Extradition Act 1989 Sch 1 para 5 (prospectively amended) (see PARA 1211 ante; and the text to notes 1-8 supra).

10 As to the Secretary of State see PARA 1116 ante. As to an order of the Secretary of State see *ibid* Sch 1 para 4(2) (prospectively amended); and PARA 1210 ante.

11 *Ibid* Sch 1 para 5(2).

12 *Ibid* Sch 1 para 5(3). As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 5(3) is to be replaced with a reference to 'the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him': see Sch 1 para 5(3) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (4)(a)). At the date at which this volume states the law no such day had been appointed.

13 Extradition Act 1989 Sch 1 para 5(4). As from a day to be appointed, the references to 'metropolitan magistrate' in Sch 1 para 5(4) are to be replaced with references to 'District Judge (Magistrates' Courts)': see Sch 1 para 5(4) (prospectively amended by the Access to Justice Act 1999 Sch 11 paras 31, 36(1), (4)(b)). At the date at which this volume states the law no such day had been appointed.

14 *Abdullah v Governor of Brixton Prison* (2 May 1997), Lexis, Enggen Library, Cases File, DC.

15 *Government of the Federal Republic of Germany v Sotiriadis* [1975] AC 1 at 29, [1974] 1 All ER 692 at 705, HL, per Lord Diplock.

16 In relation to requests for extradition from the United States a person may in cases of urgency be provisionally arrested on application through the diplomatic channel by the competent authorities of the requesting party: see the United States of America (Extradition) Order 1976, SI 1976/2144, Sch 1 Art VIII. There is provision as to the relevant documents that should accompany such a request and setting a time limit of a maximum of 45 days from the date of arrest to the receipt of the formal request or extradition: see Sch 1 Art VIII. If the request is not received by the requested country, the person sought must be set at liberty; but this does not prevent the institution of further proceedings if a request is subsequently received: see Sch 1 Art VIII. See also PARA 1158 note 23 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1213. Committal proceedings.

1213. Committal proceedings.

When a fugitive criminal¹ is brought before the metropolitan magistrate², the metropolitan magistrate has the same powers, as near as may be, including power to adjourn the case and meanwhile to remand the prisoner either in custody or on bail, as if the proceedings were the summary trial of an information against him for an offence committed in England and Wales³. If the metropolitan magistrate exercises his power to adjourn the case, he must on so doing remand the prisoner either in custody or on bail⁴. The metropolitan magistrate must receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted⁵ is an offence of a political character or is not an extradition crime⁶. The magistrate must allow the defence the opportunity to give evidence if the defence wishes to satisfy him that there is no prima facie case⁷. Extradition proceedings are criminal proceedings and the provisions of the Police and Criminal Evidence Act 1984⁸ may be invoked but only in the context of the fairness of the extradition proceedings, not of the ultimate trial itself⁹.

In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant¹⁰ authorising the arrest of such criminal is duly authenticated¹¹, and such evidence is produced as¹² would, according to the law of England and Wales, make a case requiring an answer by the prisoner if the proceedings were for the trial in England and Wales of an information for the crime, the metropolitan magistrate must commit him to prison, but otherwise must order him to be discharged¹³.

Foreign documents to be admitted in evidence are deemed to be authenticated if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued and if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other minister of the foreign state¹⁴. There are a number of restrictions on surrender in Schedule 1 cases¹⁵. The High Court does not have any comparable power to order the discharge of a fugitive offender to that available in Part III cases¹⁶.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as¹⁷ would, according to the law of England and Wales, prove that the prisoner was convicted of such crime, the metropolitan magistrate must commit him to prison, but otherwise must order him to be discharged¹⁸.

Depositions and statements on oath taken in a foreign state, and copies of such original depositions or statements and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under these provisions¹⁹. If a witness whose evidence is relied on by the requesting state gives evidence retracting that evidence in the extradition proceedings, this does not in itself discredit that evidence, nor will the fact that the witness was an alleged accomplice of the accused²⁰. A conviction obtained in the absence of the fugitive, and which would subsequently be annulled if he later surrendered, would not count as a conviction, and in those circumstances he would have to be treated as an accused person, and a prima facie case made out against him²¹. The magistrate is under no general duty to give reasons for his findings of fact or law, though in particular proceedings the principles of fairness could require him to do so²². If the magistrate commits the criminal to prison, he must commit him there to await the warrant of the Secretary of State for his surrender, and must forthwith send to the Secretary of State a certificate of the committal, and such report upon the case as he may think fit²³. He must also inform the criminal that he will not be surrendered until after the expiration of 15 days and that he has a right to apply for a writ of habeas corpus²⁴.

1 For the meaning of 'fugitive criminal' see PARA 1196 ante.

2 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

3 Extradition Act 1989 s 1(3), Sch 1 para 6(1) (amended by the Criminal Justice and Public Order Act 1994 s 158). As from a day to be appointed, the references to 'metropolitan magistrate' in Sch 1 para 6(1) (as amended), (2) and Sch 1 para 7(1) (as amended) are to be replaced with references to 'District Judge (Magistrates' Courts)': see Sch 1 paras 6(1), (2), 7(1) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

The Prosecution of Offences Act 1985 s 16(1)(c) (costs on dismissal) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2059) applies accordingly reading the reference to the dismissal of the information as a reference to the discharge of the prisoner: Extradition Act 1989 Sch 1 para 6(1) (as so amended).

4 Ibid Sch 1 para 6(1A) (added by the Criminal Justice and Public Order Act 1994 s 158).

5 For the meaning of 'convicted' see PARA 1196 note 2 ante.

6 Extradition Act 1989 Sch 1 para 6(2) (prospectively amended: see note 3 supra). For the meaning of 'extradition crime' for these purposes see PARA 1197 ante.

7 *R v Governor of Brixton Prison, ex p Gross* [1999] QB 538, sub nom *Re Gross* [1998] 3 All ER 624, DC.

8 Ie the Police and Criminal Evidence Act 1984 s 78 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365.

9 *R v Governor of Brixton Prison, ex p Levin* [1997] AC 741, [1997] 3 All ER 289, HL, in which Lord Hoffmann suggests at 748 and 295 that this will be of very rare application. The Divisional Court had previously held in *R v Governor of Belmarsh Prison, ex p Francis* [1995] 3 All ER 634, [1995] 1 WLR 1121, DC, that extradition proceedings were not criminal proceedings and that the provisions of the Police and Criminal Evidence Act 1984 did not apply.

10 For the meaning of 'warrant' see PARA 1210 note 6 ante.

11 The procedure for authentication is set out in the Extradition Act 1989 s 26 (as amended) (see PARA 1118 ante), whether under Part III (ss 7-17) (as amended) or under Sch 1 (as amended): see *R v Governor of Brixton Prison, ex p Bekar* [1997] 24 LS Gaz R 31, Times, 10 June, DC.

12 Ie subject to the provisions of the Extradition Act 1989 Sch 1 (as amended).

13 Ibid Sch 1 para 7(1) (amended by the Criminal Justice and Public Order Act 1994 s 158; and prospectively amended: see note 3 supra). See also *Re Forwell* [1996] Crim LR 119, (1994) Times, 25 October, DC.

14 See the Extradition Act 1989 s 26(1); and PARA 1118 ante. See also *Kiriakos* (7 November 1996), Lexis, Enggen Library, Cases File; *Re Barone* (7 November 1997, unreported), DC; *R v Governor of Brixton Prison, ex p Bekar* [1997] 24 LS Gaz R 31, Times, 10 June, DC.

15 See PARA 1195 ante. For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

16 As to the power to order discharge in Part III cases see the Extradition Act 1989 s 11(3); and PARA 1183 text and notes 7-12 ante. For the meaning of 'Part III cases' see PARA 1105 ante.

17 Ie subject to the provisions of ibid Sch 1 (as amended).

18 Ibid Sch 1 para 7(2) (prospectively amended: see note 3 supra).

19 Ibid Sch 1 para 12. The provisions referred to are those of Sch 1 (as amended). See also *R v Governor of Brixton Prison, ex p Bekar* [1997] 24 LS Gaz R 31, Times, 10 June, DC. As to the authentication of foreign documents see PARA 1118 ante; and the text to note 14 supra.

20 *R v Governor of Pentonville Prison, ex p Alves* [1993] AC 284, sub nom *Alves v DPP* [1992] 4 All ER 787, HL.

21 See *Re Sariog* (26 March 1993) Lexis, Enggen Library, Cases File, DC. As to convictions for contumacy see the Extradition Act 1989 Sch 1 para 20; and PARA 1196 ante.

22 *Rey v Government of Switzerland* [1999] AC 54 at 66-67, PC.

23 Extradition Act 1989 Sch 1 para 7(3).

24 See *ibid* Sch 1 para 8(1); and PARA 1207 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1213 Committal proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1214. Custody.

1214. Custody.

The magistrate¹ committing the fugitive criminal has no jurisdiction, in Schedule 1 cases², to remand the fugitive on bail while awaiting the final decision of the Secretary of State³. Any application for bail at this stage must be made to the High Court⁴. On an application for habeas corpus to the High Court⁵, if the High Court allows the application⁶ and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal to the House of Lords⁷, the court may make an order providing for the detention of the defendant, or directing that he may not be released except on bail, so long as the appeal is pending⁸. This procedure must be used whenever the requesting government intends to appeal against a ruling by the Divisional Court to the House of Lords⁹.

1 As to the role of the magistrate see PARA 1115 ante.

2 For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

3 As to the Secretary of State see PARA 1116 ante.

4 The Extradition Act 1989 Sch 1 para 7(1) (as amended) makes it clear that the magistrate has no power to grant bail: see PARA 1213 ante. For the meaning of 'High Court' see PARA 1174 note 2 ante.

5 See PARAS 1217-1228 post.

6 As to appeal in habeas corpus proceedings see the Administration of Justice Act 1960 s 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

7 As to the right of appeal see *ibid* s 1 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247. As to the application for leave to appeal see s 2 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

8 See *ibid* s 5(1) (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

9 *United States Government v McCaffery* [1984] 2 All ER 570 at 575-576, [1984] 1 WLR 867 at 873, HL, per Lord Diplock.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1215. Waiver.

1215. Waiver.

A person may give notice that he waives the rights conferred on him¹. Such a notice must be given in England and Wales in the manner prescribed by rules under the Magistrates' Courts Act 1980², and the power to make such rules³ includes power to make provision for a magistrate⁴ to order the committal for return of a person with his consent at any time after his arrest⁵. Where such an order is made, Schedule 1 to the Extradition Act 1989⁶ ceases to apply to the person in respect of whom it is made, except that if, within one month after the order is made, he is not surrendered to the foreign state⁷ to which he is to be returned, the High Court⁸, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged⁹. In such a case there would be no need for further monitoring by the Secretary of State¹⁰.

If the metropolitan magistrate¹¹ commits a fugitive criminal¹² to prison, he must inform the criminal that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of habeas corpus¹³. Upon the expiration of the said 15 days, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by the Secretary of State, the Secretary of State may by warrant¹⁴ order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and the fugitive criminal must be surrendered accordingly¹⁵. Where this form of waiver is used, the person sought retains the right to make representations at committal and retains the protections of the Extradition Act 1989, such as specialty¹⁶. Where waiver is given in this form, the Secretary of State is not required to conduct any further monitoring of his case unless there are issues of re-extradition to a third state for him to consider¹⁷.

It is lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it is lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions¹⁸ to which he escapes may be retaken upon an escape¹⁹.

1 Extradition Act 1989 s 1(3), Sch 1 para 9(1). The rights referred to in the text are conferred by Sch 1 para 8 (prospectively amended) (see text to notes 12-13 infra): see Sch 1 para 9(1).

A notice given under s 14 (see PARA 1192 ante) or Sch 1 para 9 must be in the prescribed form or a form to the like effect: see the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 5(1), Schedule Form 1. Such a notice must be signed in the presence of a metropolitan magistrate, a justice of the peace or a justices' clerk: r 5(2). For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante; definition applied by r 2. Any such notice given by a person in custody must be delivered to the governor of the prison in whose custody he is: r 5(3). If a person on bail gives such notice he must deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the Under Secretary of State, Home Office, London SW1H 9AT: r 5(4).

2 See under the Magistrates' Courts Act 1980 s 144 (as amended): see MAGISTRATES vol 29(2) (Reissue) PARA 588.

3 As to procedure under the Extradition Act 1989 Sch 1 para 9 see the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597.

4 As to the role of the magistrate see PARA 1115 ante.

5 Extradition Act 1989 Sch 1 para 9(2). This is without prejudice to the generality of the Magistrates' Courts Act 1980 s 144(1).

6 le the Extradition Act 1989 Sch 1 (as amended).

7 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante.

8 For the meaning of 'High Court' see PARA 1174 note 2 ante.

9 Extradition Act 1989 Sch 1 para 9(4). A person arrested in pursuance of a warrant under s 8 (as amended) (see PARAS 1187-1189 ante) or Sch 1 para 5 (prospectively amended) (see PARA 1211 ante) may at any time consent to his return; and where such consent is given in accordance with the following provision, a metropolitan magistrate may order the committal for return of that person in accordance with s 14(2) (see PARA 1192 text to note 4 ante) or, as the case may be, Sch 1 para 9(2): Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 6(1). A notice of consent for the purposes of r 6 must be given in the prescribed form or a form to the like effect and must be signed in the presence of a metropolitan magistrate: see r 6(2), Schedule Form 2.

10 *R v Secretary of State for the Home Department, ex p Akbar* (31 July 1996) Lexis, Enggen Library, Cases File, DC. As to the Secretary of State see PARA 1116 ante.

11 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante.

12 For the meaning of 'fugitive criminal' see PARA 1196 ante.

13 Extradition Act 1989 Sch 1 para 8(1); and see PARA 1207 ante. As from a day to be appointed, the reference to 'metropolitan magistrate' in Sch 1 para 8(1) is to be replaced with a reference to 'District Judge (Magistrates' Courts)': see Sch 1 para 8(1) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 36(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the writ of habeas corpus in extradition cases see PARAS 1217-1228 post.

14 As to the form of warrants see the Extradition Act 1989 s 28 (as amended); and PARA 1193 ante.

15 Ibid Sch 1 para 8(2).

16 As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

17 *R v Secretary of State for the Home Department, ex p Akbar* (31 July 1996) Lexis, Enggen Library, Cases File, DC, per Beldam LJ.

18 As to Her Majesty's dominions see PARA 1195 note 5 ante.

19 Extradition Act 1989 Sch 1 para 8(3).

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/4. CASES UNDER SCHEDULE 1 TO THE EXTRADITION ACT 1989/(4) PROCEDURE/1216. Power of Secretary of State to issue warrant for return.

1216. Power of Secretary of State to issue warrant for return.

If the magistrate¹ commits a fugitive criminal² to prison he must commit him there to await the warrant of the Secretary of State³ for his surrender, and must forthwith send to the Secretary of State a certificate of the committal, and such report upon the case as he may think fit⁴. The magistrate is entitled to see fit to send no report⁵. The Secretary of State may, after the expiry of 15 days from committal, or at the conclusion of habeas corpus proceedings, if any, or after such further period as he may allow, issue a warrant to order the surrender of the fugitive criminal to the requesting state⁶. He, like the magistrate, and the High Court on an application for habeas corpus, must consider whether any of the restrictions on surrender apply. Unlike the magistrate on committal, who must commit a fugitive criminal to prison if a prima facie case of the commission by the fugitive of a non-political and extraditable offence is established before him, the Secretary of State has a general discretion to refuse to issue the warrant for return⁷. The decision as to whether to issue the warrant and signature of the warrant may be made by the Secretary of State, or by a Minister of State, or by an Under-Secretary of State⁸.

If the offence for which extradition is requested is punishable by death under the relevant law of the requesting party, but the relevant law of the requested party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting party gives assurances satisfactory to the requested party that the death penalty will not be carried out⁹.

It is lawful for any person to whom a warrant for return is directed to receive, hold in custody, and convey the fugitive criminal within the jurisdiction of the foreign state; if the criminal escapes, it is lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions¹⁰ to which he escapes may be retaken upon an escape¹¹.

1 As to the role of the magistrate see PARA 1115 ante.

2 For the meaning of 'fugitive criminal' see PARA 1196 ante.

3 As to the Secretary of State see PARA 1116 ante.

4 Extradition Act 1989 s 1(3), Sch 1 para 7(3); and see PARA 1213 ante.

5 *R v Secretary of State for the Home Department, ex p Hagan* (25 May 1994) Lexis, Enggen Library, Cases File, DC.

6 See the Extradition Act 1989 Sch 1 para 8(2); and PARA 1215 ante.

7 *R v Secretary of State for the Home Department, ex p Hagan* (15 December 1993) Lexis, Enggen Library, Cases File, DC. The restrictions in the Extradition Act 1989 s 12(2)(a) (as amended) do not apply directly to Schedule 1 cases, but in practice the Secretary of State applies them in Schedule 1 cases and this has been approved by the Divisional Court: *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC. For the meaning of 'Schedule 1 cases' see PARA 1110 ante. See also PARA 1194 et seq ante. His discretion is not restricted by the terms of a treaty: *R v Secretary of State for the Home Department, ex p Sinclair* [1992] Imm AR 293, 4 Admin LR 613, DC.

8 *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC. See also the Extradition Act 1989 s 28(1); and PARA 1193 ante.

9 United States of America (Extradition) Order 1976, SI 1976/2144, Sch 1 Art IV.

10 As to Her Majesty's dominions see PARA 1195 note 5 ante.

11 See the Extradition Act 1989 Sch 1 para 8(3); and PARA 1215 ante.

UPDATE

1194-1216 Cases under Schedule 1 to the Extradition Act 1989

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1217. The right to apply for habeas corpus.

5.

(1) HABEAS CORPUS

1217. The right to apply for habeas corpus.

Any person who is committed to custody, whether under Part III or Schedule 1 to the Extradition Act 1989¹, can challenge the validity of the committal by way of an application for habeas corpus². The right is not affected by the fact that the person committed has been released on bail and, consequently, is under no immediate personal restraint³. In addition, in Part III cases⁴, the High Court must order the discharge of the person committed if certain statutory criteria are met⁵.

1 le the Extradition Act 1989 Pt III (ss 7-17) (as amended) or s 1(3), Sch 1 (as amended).

2 See CPR Sch 1 RSC Ord 54. As to the writ of habeas corpus and the procedure to be followed see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

The applicant may make more than one application for habeas corpus in the course of the same extradition proceedings, but the court has the right to protect itself by preventing its procedures being used in a manner which amounts to an abuse of process: *Re Tarling* [1979] 1 All ER 981, sub nom *R v Governor of Pentonville Prison, ex p Tarling* [1979] 1 WLR 1417, DC. See also the Administration of Justice Act 1960 s 14 (as amended); *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579, DC; *R v Secretary of State for Home Affairs, ex p Osman* (20 November 1992) Lexis, Enggen Library, Cases File; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 231.

As from 26 April 1999, the Civil Procedure Rules (CPR) replace the Rules of the Supreme Court and the County Court Rules. Certain provisions of the RSC and CCR are saved in a modified form in CPR Schs 1 and 2 respectively. The CPR apply to proceedings issued on or after 26 April 1999, and new steps taken in existing proceedings, as prescribed: CPR 51; *Practice Direction--Transitional Arrangements* (1999) PD 51. The CPR have the overriding objective of enabling the court to deal with cases justly: CPR 1.1(1).

In the light of the overriding objective of the CPR, the court, in deciding how a case ought to proceed, must apply principles under the CPR and not under the previous regime of RSC or CCR: see *Biguzzi v Rank Leisure plc* [1999] 4 All ER 934, [1999] 1 WLR 1926, CA. Earlier authorities on matters of civil procedure (even where the provisions in question in the CPR are identically worded to those under the RSC or CCR) are therefore not necessarily applicable in interpreting the new rules: see *Natwest Lombard Factors Ltd v Arbis* (1999) Times, 10 December. Accordingly, cases cited in this title in amplification or explanation of the former rules will be binding over proceedings conducted under those rules, but should be viewed with caution in relation to proceedings conducted under the new regime.

3 *R v Spilsbury* [1898] 2 QB 615, DC; *Re Amand* [1941] 2 KB 239 at 249, DC, per Viscount Caldecote CJ. For the purposes of the Extradition Act 1989 s 6(4) (as amended) (see PARA 1181 ante), a person who is on bail is to be treated as being 'kept in custody' notwithstanding the remand on bail: *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994 at 1000-1001, [1998] 3 WLR 221 at 225, DC, per Simon Brown LJ, and at 1011 and 235-236 per Mance J.

4 le but not under the Extradition Act 1989 Sch 1 (as amended). For the meaning of 'Part III cases' see PARA 1105 ante.

5 See *ibid* s 11(3); and PARAS 1183 ante, 1222 post. The High Court has no residual supervisory jurisdiction whereby it can order the discharge of the person committed on the grounds that it would be unjust or oppressive to return him to the requesting state, that question being one for the Secretary of State to consider in deciding whether or not to order the surrender or return of the person in question: see *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL. See also *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. The Extradition Act 1989 s 11(3) does not

restrict any other jurisdiction of the court on an application for habeas corpus: *De Canha v Government of Portugal* (7 July 1997) Lexis, Enggen Library, Cases File, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1217 The right to apply for habeas corpus

NOTE 2--See *Re St John* [2001] All ER (D) 151 (Jul), DC (application inappropriate to consider whether committal exposing accused to risk of death penalty violated his human rights). See also *R (on the application of Marais) v Governor of Brixton Prison* (2001) Times, 18 December (application for habeas corpus, claiming that extradition proceedings breached prohibition of retrospective laws under European Convention on Human Rights, dismissed).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1218. The obligation of the court.

1218. The obligation of the court.

Part III of and Schedule 1 to the Extradition Act 1989¹ contain similar provisions requiring the court committing any person to tell that person of his right to apply for habeas corpus² and for preventing his surrender to the requesting state, initially for a period of 15 days and continuing thereafter if an application for habeas corpus is made³.

Where a person is committed to custody to await his return under Part III of the Extradition Act 1989⁴, the court must inform him in ordinary language of his right to apply for habeas corpus⁵ and any person committed may not be returned in any case until the expiration of the period of 15 days beginning with the day on which the order for his committal is made⁶, and if an application for habeas corpus is made in his case, he may not be returned so long as proceedings on that application are pending⁷. These rights can be waived by the person who has been committed⁸ by notice in the prescribed form⁹.

Where a person is committed to prison under Schedule 1 to the Extradition Act 1989¹⁰, the magistrate¹¹ must inform him that he will not be surrendered until after the expiration of 15 days and that he has the right to apply for a writ of habeas corpus¹². The Secretary of State¹³ cannot order the surrender of that person until after the expiration of the 15 day period or, if a writ of habeas corpus is issued, until after the decision of the court upon the return of the writ (or until after such further period as may be allowed in either case by the Secretary of State)¹⁴. These rights can be waived by the person committed¹⁵ by notice in the prescribed form¹⁶.

1 See the Extradition Act 1989 Pt III (ss 7-17) (as amended) and s 1(3), Sch 1 (as amended).

2 See PARAS 1183 text to note 6, 1215 ante.

3 See PARAS 1183, 1207 ante.

4 See the Extradition Act 1989 s 9 (as amended); and PARAS 1189-1191 ante.

5 See *ibid* s 11(1); and PARA 1183 ante.

6 See *ibid* s 11(2)(a); and PARA 1183 ante. The words 'beginning with' make it clear that, in computing the 15 day period, the day from which it runs is to be included: see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA.

7 See the Extradition Act 1989 s 11(2)(b); and PARA 1183 ante. Proceedings on an application for habeas corpus must be treated for the purposes of s 11 as pending (unless they are discontinued) until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal: s 11(5); and see PARA 1183 ante.

8 See *ibid* s 14; and PARA 1192 ante.

9 As to the formal requirements for the notice see *ibid* s 14(2); and PARA 1192 ante.

10 As to committal to prison under *ibid* Sch 1 (as amended) see PARA 1213 ante.

11 As to the role of the magistrate see PARA 1115 ante.

12 See the Extradition Act 1989 Sch 1 para 8(1); and PARA 1207 ante.

13 As to the Secretary of State see PARA 116 ante.

14 See the Extradition Act 1989 Sch 1 para 8(2); and PARA 1215 ante.

15 See *ibid* Sch 1 para 9(1); and PARA 1215 ante.

16 As to the formal requirements for the notice see *ibid* Sch 1 para 9(2); and PARA 1215 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1219. Application for habeas corpus.

1219. Application for habeas corpus.

An application for a writ of habeas corpus may be made without notice being served on any other party¹ and the court on hearing such an application may make an order forthwith for the writ of habeas corpus to issue, or may adjourn the application so that notice of the claim form can be given².

1 CPR Sch 1 RSC Ord 54 r 1(2). As to the CPR see PARA 1217 note 2 ante. The application must be supported by a witness statement or affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint: CPR Sch 1 RSC Ord 54 r 1(2). If he is unable for any reason to make the witness statement or affidavit required by CPR Sch 1 RSC Ord 54 r 1(2), it can be made by a person on his behalf stating that the person restrained is unable to make the witness statement or affidavit himself and stating the reason: CPR Sch 1 RSC Ord 54 r 1(3).

2 See CPR Sch 1 RSC Ord 54 r 2(1). As to the writ of habeas corpus and the procedure to be followed see CPR Sch 1 RSC Ord 54; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq. The claim form is normally served on the keeper of the body (usually the governor of the prison to which the fugitive offender has been committed), and on the diplomatic representative of the requesting or requisitioning state: see *R v Governor of Brixton Prison, ex p Minervini* [1959] 1 QB 155, [1958] 3 All ER 318, DC. The Secretary of State for the Home Department is not a party to such an application.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1220. The duty of the court on an application for habeas corpus.

1220. The duty of the court on an application for habeas corpus.

The court hearing an application for a writ of habeas corpus is not a court of appeal from the magistrate¹ on questions of fact², but has only to ensure that the magistrate had sufficient evidence before him. It has no general common law supervisory jurisdiction and can only intervene in the circumstances predicated by the Extradition Act 1989³. The court will always examine whether the magistrate had jurisdiction to order the committal⁴. An accused may contend that the crime with which he is charged is not an extradition crime either because it does not come within the class of offence to which Part III of or Schedule 1 to the Extradition Act 1989⁵ relates⁶, or because return or surrender, committal or detention in custody for the purposes of such return or surrender is prohibited by virtue of the provisions of the Extradition Act 1989⁷.

1 As to the role of the magistrate see PARA 1115 ante.

2 In habeas corpus proceedings the court does not re-hear the case that was before the magistrate or hear an appeal from his order, but its function is to see that the prisoner is lawfully detained by his gaoler. The House of Lords has no wider power than that of the lower courts. The court must consider whether on the material before the magistrate a reasonable magistrate would have been entitled to commit the prisoner, but neither a court nor the House of Lords can re-try the case so as to substitute its discretion for that of the magistrate: *Schtraks v Government of Israel* [1964] AC 556 at 579, [1962] 3 All ER 529 at 532-533, HL, per Lord Reid, at 585 and 536 per Viscount Radcliffe, and at 596 and 543 per Lord Evershed. See, however, *Government of the Federal Republic of Germany v Sotiriadis* [1975] AC 1 at 30, [1974] 1 All ER 692 at 706, HL, per Lord Diplock, who restricted the court's power to intervene to situations where there was no evidence upon which the magistrate could commit. In *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701, [1990] 1 WLR 277, DC, the Divisional Court stated that there was no substantial difference between the two tests. See also *R v Governor of Pentonville Prison, ex p Cairns* (14 February 1974, unreported), DC.

3 *Re Schmidt* [1995] 1 AC 339 at 379, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65 at 77, HL, per Lord Jauncey of Tullichettle. See also *Atkinson v United States Government* [1971] AC 197, [1969] 1 All ER 1317, HL; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL.

4 See *R v Governor of Brixton Prison, ex p Shuter* [1960] 2 QB 89, sub nom *Re Shuter* [1959] 2 All ER 782, DC; *R v Governor of Brixton Prison, ex p Sadri* [1962] 3 All ER 747, [1962] 1 WLR 1304, DC; *R v Governor of Brixton Prison, ex p Gardner* [1968] 2 QB 399, [1968] 1 All ER 636, DC; *Re Kek Peng-Teng* [1969] Hong Kong LR 564 (where the court, requiring to be further satisfied as to the committing magistrate's jurisdiction, held that it could either remit the matter to him for further evidence or call such evidence itself; it would not, however, re-hear the entire case).

5 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended) or s 1(3), Sch 1 (as amended), as the case may be.

6 See, for example, *Tarling v Government of the Republic of Singapore* (1978) 70 Cr App Rep 77, HL; cf *R v Secretary of State for the Home Department, ex p Hill* [1997] 2 All ER 638, 147 NLJ 525, DC; *R v Stig Nilsson (Gotthold)* (8 May 1998, unreported), DC; *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701, [1990] 1 WLR 277, DC; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 3) (Amnesty International intervening)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* [1999] 4 All ER 1, [1999] 3 WLR 620, HL; *R v Bow Street Magistrates' Court, ex p Raccagni* (17 December 1998) Lexis, Enggen Library, Cases File, DC.

7 As to restrictions on return in relation to Part III cases see the Extradition Act 1989 ss 6 (as amended), 11(3); and PARAS 1174, 1179-1181, 1183 ante. For the meaning of 'Part III cases' see PARA 1105 ante. As to restrictions on return to a designated Commonwealth country which is party to the International Convention against the Taking of Hostages (opened for signature at New York on 18 December 1989) see the Extradition Act 1989 s 25; and PARA 1182 ante. As to restrictions with respect to the surrender of fugitive criminals under Sch 1 (as amended) see Sch 1 para 1(2) (prospectively amended), (3); and PARAS 1203, 1205 ante.

For examples of habeas corpus applications in respect of s 11(3) see PARAS 1183 ante, 1222 post. For examples of habeas corpus applications made with respect to the restrictions in s 6 (as amended) see *R v Governor of Brixton Prison, ex p Osman (No 3)* [1992] 1 All ER 122, [1992] 1 WLR 36; *Re Barone* (7 November 1997, unreported), DC; *R v Governor of Pentonville Prison, ex p Lee* [1993] 3 All ER 504, [1993] 1 WLR 1294, DC; *R v Governor of Belmarsh Prison, ex p Dunlayici* (1996) Times, 2 August, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1221. Sufficiency of evidence on an application for habeas corpus.

1221. Sufficiency of evidence on an application for habeas corpus.

The court will not grant an application for a writ of habeas corpus if there was evidence upon which the magistrate¹ could commit². The sufficiency of the evidence is a question for the magistrate³. The court will interfere only if it is satisfied there was no evidence upon which a magistrate, properly directing himself as to the law, could have committed⁴. The evidence must be admissible evidence⁵. Where the magistrate has ordered a remand for further evidence, the court cannot treat that order as a nullity and adjudicate on the case as if the whole of the evidence was before the court⁶.

1 As to the role of the magistrate see PARA 1115 ante.

2 The requirement in the Extradition Act 1989 s 9(8)(a) (as amended) (see PARA 1190 ante), in an accusation case, that the court must be satisfied that the evidence would be sufficient to make a case requiring an answer by that person if the proceedings were a summary trial of an information against him, has been abrogated in relation to countries which are co-signatories of the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762): see the European Convention on Extradition Order 1990, SI 1990/1507.

3 *Ex p Huguet* (1873) 29 LT 41; *Re Counhaye* (1873) LR 8 QB 410 at 416, DC, per Blackburn J; *R v Maurer* (1883) 10 QBD 513, DC; *Re Meunier* [1894] 2 QB 415, DC; *Re Arton* [1896] 1 QB 108, DC; *R v Governor of Holloway Prison, Re Siletti* (1902) 20 Cox Cr Cas 353, DC; *R v Governor of Brixton Prison, ex p Perry* [1924] 1 KB 455, DC; *Schtraks v Government of Israel* [1964] AC 556 at 579-580, [1962] 3 All ER 529 at 533, HL, per Lord Reid; *Government of the Federal Republic of Germany v Sotiriadis* [1975] AC 1, [1974] 1 All ER 692, HL; *R v Governor of Pentonville Prison, ex p Cairns* (14 February 1974, unreported), DC.

4 *R v Maurer* (1883) 10 QBD 513, DC; *Armah v Government of Ghana* [1968] AC 192, [1966] 3 All ER 177, HL. For cases where habeas corpus has been granted see eg *R v Governor of Brixton Prison, ex p Frenette* (1952) Times, 19 March; *R v Governor of Brixton Prison, ex p Penn* (1952) 96 Sol Jo 696, DC.

5 As to evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

6 *United States of America v Gaynor* [1905] AC 128, PC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1221 Sufficiency of evidence on an application for habeas corpus

NOTE 2--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1222. Additional grounds for discharge under Part III of the Extradition Act 1989.

1222. Additional grounds for discharge under Part III of the Extradition Act 1989.

Where a person is committed to custody to await his return under Part III of the Extradition Act 1989¹, without prejudice to any jurisdiction of the High Court² apart from this provision, the court must order the applicant's discharge³ from custody if it appears to the court that by reason of the trivial nature of the offence⁴, or by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be⁵, or because the accusation against him is not made in good faith in the interests of justice⁶, it would, having regard to all the circumstances⁷, be unjust or oppressive⁸ to return him⁹.

¹ See the Extradition Act 1989 Pt III (ss 7-17) (as amended). As to committal see s 9 (as amended); and PARAS 1189-1191 ante.

There is no such power conferred on the High Court in Schedule 1 cases. The High Court has no residual supervisory jurisdiction whereby it can order the discharge of the person committed on the grounds that it would be unjust or oppressive to return him to the requesting state, that question being one for the Secretary of State to consider in deciding whether or not to order the surrender or return of the person in question to the requesting state: see *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL. See also *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. Note, however, that in Part III cases, the Secretary of State may not make an order for the return of a person if it appears to him that any of the grounds specified in the Extradition Act 1989 s 12(2)(a)(i)-(iii) (as amended) apply: see s 12(2) (as amended); and PARA 1193 ante. For the meaning of 'Schedule 1 cases' see PARA 1110 ante; and for the meaning of 'Part III cases' see PARA 1105 ante. As to the Secretary of State see PARA 1116 ante.

Although there is no express provision within s 1(3), Sch 1 (as amended) prohibiting the Secretary of State from ordering the surrender in such a case, as a matter of practice the Secretary of State will not order surrender in a Schedule 1 case if such grounds are made out on the facts of any particular case and this approach has been expressly endorsed by the Divisional Court: see *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56 at 65, Times, 10 February, per Henry LJ.

² For the meaning of 'High Court' see PARA 1174 note 2 ante.

³ See the Extradition Act 1989 s 11(3); and PARA 1183 ante. The High Court does not have discretion as to whether or not to order discharge if it concludes that the criteria set out in s 11(3) are met. This provision requires the High Court to determine as a matter of fact whether or not it would be unjust or oppressive to return an applicant by reason of the specified criteria on the facts of the particular case. If the court concludes as a matter of fact that it would be unjust or oppressive to return the applicant, it must order his discharge. Note, however, that a Divisional Court should not make an unqualified order for the release of a fugitive pending an appeal to the House of Lords: *United States Government v McCaffery* [1984] 2 All ER 570, [1984] 1 WLR 867, HL.

⁴ Extradition Act 1989 s 11(3)(a); and see PARA 1183 ante. See, however, *R v Brixton Prison Governor, ex p McChayne* [1951] 1 TLR 1155, DC; *Re Clemetson* [1956] Crim LR 50 (an alleged offence of dishonesty by a post office official, however small the sum, should be investigated).

⁵ Extradition Act 1989 s 11(3)(b); and see PARA 1183 ante. The relevant period for the purposes of s 11(3)(b) is the period between the date on which the offence was alleged to have been committed and the date of the hearing before the Divisional Court at which the applicant could raise for the first time this ground as one on which he could rely to resist extradition: see *Kakis v Government of the Republic of Cyprus* [1978] 2 All ER 634, [1978] 1 WLR 779 at 782, HL, per Lord Diplock; *Re Tarling* [1979] 1 All ER 981 at 989-990, sub nom *R v Governor of Pentonville Prison, ex p Tarling* [1979] 1 WLR 1417 at 1425-1426, DC, per Gibson J.

In order to fall within these provisions, it must be the delay which causes the injustice or oppression: *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56 at 66, Times, 10 February, per Henry LJ; cf *Cornelius v Government of Sweden* (17 June 1998) Lexis, Enggen Library, Cases File, DC. The question of whether or not there was a good reason for the delay by the requesting or requisitioning state may be relevant: see *Union of India v Narang* [1978] AC 247 at 255-256, [1977] 2 All ER 348 at 355-356, DC, per

Slynn J (decision revsd on the facts [1978] AC 247, [1977] 2 All ER 348, HL); *Re Ashley-Riddle* (22 November 1993) Lexis, Enggen Library, Cases File, DC. However, the question that has to be addressed is what is the actual effect on the person sought of whatever delay has occurred. '[The Extradition Act 1989 s 11(3)(b)], it should be remembered, is neither a limitation clause nor a disciplinary measure. Its focus is the person sought and the effect on him of whatever delay there has been. Thus, excusable delay, if its effect meets the statutory test, may require discharge; and inexcusable delay, if its impact on the person sought is not within the mischief aimed at, may fail to do so...': *Re Ashley-Riddle* supra. See also *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579 at 587, DC, per Woolf LJ; *Kakis v Government of the Republic of Cyprus* [1978] 2 All ER 634 at 638, [1978] 1 WLR 779 at 782-783, HL, per Lord Diplock. However, the applicant cannot generally rely on any passage of time brought about by flight and concealment on his part: *R v Governor of Brixton Prison, ex p Osman (No 4)* supra at 587 per Woolf LJ; *Re Ashley-Riddle* supra. See also *Re Ward* (24 February 1994) Lexis, Enggen Library, Cases File, CA (where the court held that although it would not be unjust to surrender the person sought, because of the sense of security induced in him, it would be oppressive to return him); *Re Lauder's Application* (14 December 1994) Lexis, Enggen Library, Cases File, DC; *Re Rose* (14 February 1994) Lexis, Enggen Library, Cases File, DC; *Re Debs* (6 March 1998) Lexis, Enggen Library, Cases File, DC.

For guidance on some of the relevant considerations for the Secretary of State in considering the requirements of the provisions of the Extradition Act 1989 s 12(2)(a) (as amended) (see PARA 1193 ante) (and thus for the courts in considering the effect of s 11(3)(b) (see PARA 1183 ante)) see *R v Secretary of State for the Home Department, ex p Patel* supra. In this case it was found that the only conclusion that the Secretary of State could have reached on the facts of the case was that it would be unjust and oppressive to return the applicant after a delay of 9 to 12 years from the dates when the alleged offences were committed, with the relevant considerations being: (1) that the charges were serious, though not of the first level of seriousness; (2) that the offences had been committed between 9 and nearly 12 years earlier, and were contested; (3) that the offences had come to light in 1983 or 1984 and, on the applicant's case, depended on conflicting accounts of orally agreed terms of engagement and also on matters of detail where memory would or might be important so that the suggestion was that the trial would inevitably be compromised to some extent by the passage of time; (4) that the applicant had not been culpable; and (5) that the overall period of delay was rendered the more oppressive by virtue of the fact that for a period of six years the applicant believed that his extradition was no longer being sought and during that time he had taken on matrimonial and other responsibilities.

See also *R v Governor of Brixton Prison, ex p Jenkins* (16 April 1969, unreported), DC (where a delay of two years was deemed to be unjust and oppressive, although the circumstances of the case were 'borderline'); *R v Governor of Pentonville Prison, ex p Teja* [1971] 2 QB 274, [1971] 2 All ER 11, DC (where a delay of eight years was not unjust as it was largely due to the applicant, and not the result of neglect on the part of the requesting country); cf *R v Governor of Brixton Prison, ex p Cook* [1970] Crim LR 699, 114 Sol Jo 827, DC; *Higgison v Secretary of State for Scotland and HM Advocate* 1973 SLT (Notes) 35. See also *R v Governor of Pentonville Prison, ex p Kirby* [1979] 2 All ER 1094, [1979] 1 WLR 541, DC; affd sub nom *Kirby v Government of Canada* (28 July 1976, unreported), HL, where the delay was six and a half years, the investigation having proceeded 'at a somewhat leisurely pace' and with a fair amount of indecision by the requesting Commonwealth country, but the court held that it was not unjust and oppressive to return the fugitive offender). A court might hold that it was unjust and oppressive to return a fugitive offender if it would be seriously detrimental to his health to undergo imprisonment and a long journey: *Re H (A Prisoner)* [1971] NZLR 982 (a case under the Fugitive Offenders Act 1881). See also *Oskar v Government of the Commonwealth of Australia* [1988] AC 366, [1988] 1 All ER 183, HL (delay of 17 months not deemed to be unjust or oppressive); *Re Davies* (30 July 1997) Lexis, Enggen Library, Cases File, DC (unjust and oppressive to extradite a clinically depressed man for committing an offence even where his condition had developed during a period of delay which he had caused).

6 Extradition Act 1989 s 11(3)(c); and see PARA 1183 ante. See *R v Governor of Brixton Prison, ex p Naranjan Singh* [1962] 1 QB 211, sub nom *Re Naranjan Singh* [1961] 2 All ER 565, DC; *Zacharia v Republic of Cyprus* [1963] AC 634, [1962] 2 All ER 438, HL. See also *R v Governor of HM Prison, Brixton, ex p Savarkar* [1910] 2 KB 1056, CA; *R v Governor of Brixton Prison, ex p Green* [1955] Crim LR 100, (1954) Times, 16 December, DC; *Re Henderson, Henderson v Secretary of State for Home Affairs* [1950] 1 All ER 283 at 286-287, CA, per Tucker LJ; *Re Calis* (19 November 1993) Lexis, Enggen Library, Cases File, DC (the accusation was a continuing act, and even if originally made in good faith, if the accuser's motives changed so that the accusation became a means of blackmail, then the condition in the Extradition Act 1989 s 11(3)(c) (see PARA 1183 ante) was made out); *Re Debs* (6 March 1998) Lexis, Enggen Library, Cases File, DC; *Pinton v Secretary of State for the Home Department* (19 May 1999) Lexis, Enggen Library, Cases File, DC.

7 The circumstances to be regarded must be relevant to the question of whether it would be unjust or oppressive to return a person by reason of any of the matters set out in the Extradition Act 1989 s 11(3)(a)-(c) (see PARA 1183 ante): see *Union of India v Narang* [1978] AC 247 at 272, [1977] 2 All ER 348 at 361-362, HL, per Viscount Dilhorne, and at 289-290 and 375-376 per Lord Fraser. See also *R v Governor of Pentonville Prison, ex p Teja* [1971] 2 QB 274 at 290, [1971] 2 All ER 11 at 23, DC, per Lord Parker CJ; *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579 at 585-586, DC, per Woolf LJ.

8 In a case falling within the Extradition Act 1989 s 11(3)(b), 'unjust' is directed primarily to the risk of prejudice to the person committed in the conduct of the trial itself, and 'oppressive' to the hardship to the person committed resulting from changes in his circumstances during the period to be taken into consideration.

However, the concepts can overlap and between them they are intended to cover all cases where to return him would not be fair: see *Kakis v Government of the Republic of Cyprus* [1978] 2 All ER 634 at 638, [1978] 1 WLR 779 at 782-783, HL, per Lord Diplock. See also *Re Ward* (24 February 1994) Lexis, Enggen Library, Cases File, CA (in this case the court held that although it would not be unjust to surrender the person sought, because of the sense of security induced in him, it would be oppressive to return him). Where certain laws make it oppressive and unjust to return a person, the laws should be judged as they stand and undertakings not to enforce them should not be accepted: *Armah v Government of Ghana* [1968] AC 192, [1966] 3 All ER 177, HL. See also *Cornelius v Government of Sweden* (17 June 1998) Lexis, Enggen Library, Cases File, DC (where it was held that it would be unjust, but not oppressive, to return the applicant to Sweden for trial because one of the main witnesses could not be contacted and because the Swedish authorities had interviewed the applicant at an earlier stage without indicating that he was under suspicion); *Re Davies* (30 July 1997) Lexis, Enggen Library, Cases File, DC (where it was held that it was unjust and oppressive to extradite a clinically depressed man for committing an offence even where his condition had developed during a delay in proceedings that he had caused).

9 Extradition Act 1989 s 11(3); and see PARA 1183 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1222 Additional grounds for discharge under Part III of the Extradition Act 1989

NOTE 5--See *R (on the application of Oncel) v Governor of Brixton Prison* (2002) Times, 17 January, DC; and PARA 1180 NOTE 3. For guidance on whether extradition should take place when some charges are time-barred see *Jaffar v Governor of Brixton Prison* (2003) Times, 8 December. The court is required by s 11(3)(b) to decide whether it would be unjust to return the applicant for trial having regard to the passage of time, not whether it would be unjust to try him: *Woodcock v Government of New Zealand* [2003] EWHC 2668 (Admin), [2004] 1 WLR 1979.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1223. Successive applications for habeas corpus.

1223. Successive applications for habeas corpus.

An applicant may not make more than one application for habeas corpus on the same grounds, unless each succeeding application is supported by fresh evidence¹, but the court retains the power to protect its own procedures from abuse².

¹ See the Administration of Justice Act 1960 s 14(2); *Re Tarling* [1979] 1 All ER 981, sub nom *R v Governor of Pentonville Prison, ex p Tarling* [1979] 1 WLR 1417, DC; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 231. As to the meaning of 'fresh evidence' see *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579, DC; *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 3 All ER 208, [1975] 1 WLR 893, DC. See also *R v Governor of Brixton Prison, ex p Debs* (12 November 1999), Lexis, Enggen Library, Cases File, DC.

² *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1223 Successive applications for habeas corpus

NOTE 1--Administration of Justice Act 1960 s 14(2) amended: Constitutional Reform Act 2005 Sch 4 para 52, Sch 18 Pt 2.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1224. Admissibility of additional evidence on applications for habeas corpus under Part III of the Extradition Act 1989.

1224. Admissibility of additional evidence on applications for habeas corpus under Part III of the Extradition Act 1989.

In applications for habeas corpus made under Part III of the Extradition Act 1989¹, the court may receive additional evidence relevant to the exercise of its jurisdiction².

The court may also receive additional evidence on the issue of whether the magistrate³ had jurisdiction to commit the applicant⁴; and, in certain circumstances, to cure a technical defect in the proceedings before the magistrate⁵. Evidence received before the court of committal without any objection is admissible before the High Court, despite any later objections to its admissibility that may be voiced before the High Court⁶.

1 The Extradition Act 1989 Pt III (ss 7-17) (as amended). As to applications for habeas corpus under Pt III (as amended) see ss 6 (as amended) (see PARAS 1174, 1179-1181 ante), 11(3) (see PARA 1183 ante).

2 Ibid s 11(4); and see PARA 1183 ante.

3 As to the role of the magistrate see PARA 1115 ante.

4 For example, that the crime with which the fugitive is charged or for which he has been convicted is not an extradition crime: *Schtraks v Government of Israel* [1964] AC 556 at 596-597, [1962] 3 All ER 529 at 543, HL, per Lord Evershed.

5 *Schtraks v Government of Israel* [1964] AC 556 at 605, [1962] 3 All ER 529 at 549, HL, per Lord Hodson; *R v Governor of Brixton Prison, ex p Percival* [1907] 1 KB 696, DC; *R v Governor of Brixton Prison, ex p Shuter* [1960] 2 QB 89, sub nom *Re Shuter* [1959] 2 All ER 782, DC; *R v Governor of Brixton Prison, ex p Sadri* [1962] 3 All ER 747, [1962] 1 WLR 1304, DC.

6 *R v Governor of Brixton Prison, ex p Jenkins* (16 April 1969, unreported), DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1225. Admissibility of additional evidence on applications for habeas corpus under Schedule 1 to the Extradition Act 1989.

1225. Admissibility of additional evidence on applications for habeas corpus under Schedule 1 to the Extradition Act 1989.

In applications for habeas corpus made under Schedule 1 to the Extradition Act 1989¹, there is no general right to adduce evidence additional to that before the magistrate². However, the applicant is entitled to adduce additional evidence on the following issues: proving that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character³; lack of jurisdiction in the magistrate *ab initio*⁴; or to cure a technical defect in the proceedings⁵. Further evidence tendered in order to contradict or discredit the evidence given before the magistrates is inadmissible⁶. Should evidence be forthcoming after committal, which raises a doubt about the fugitive's identity, the court similarly will not entertain such evidence but will leave the matter to the decision of the Secretary of State⁷. Evidence received before the court of committal without any objection is admissible before the High Court, despite any later objections to its admissibility that may be voiced before the High Court⁸.

1 le the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL; *Re Nobbs* [1978] 3 All ER 390, [1978] 1 WLR 1302, DC. As to the role of the magistrate see PARA 1115 ante.

3 See the Extradition Act 1989 s 1(3), Sch 1 para 1(2)(b); *Schtraks v Government of Israel* [1964] AC 556 at 605, [1962] 3 All ER 529 at 549, HL, per Lord Hodson; and PARA 1203 ante.

4 For example, that the crime with which the fugitive is charged or of which he has been convicted is not an extradition crime: *Schtraks v Government of Israel* [1964] AC 556 at 596-597, [1962] 3 All ER 529 at 543, HL, per Lord Evershed.

5 *Schtraks v Government of Israel* [1964] AC 556 at 605, [1962] 3 All ER 529 at 549, HL, per Lord Hodson; *R v Governor of Brixton Prison, ex p Percival* [1907] 1 KB 696, DC; *R v Governor of Brixton Prison, ex p Shuter* [1960] 2 QB 89, sub nom *Re Shuter* [1959] 2 All ER 782, DC; *R v Governor of Brixton Prison, ex p Sadri* [1962] 3 All ER 747, [1962] 1 WLR 1304, DC.

6 *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL; *R v Governor of Holloway Prison, ex p Siletti* (1902) 20 Cox Cr Cas 353, DC; *R v Governor of Brixton Prison, ex p Perry* [1924] 1 KB 455, DC.

7 *R v Governor of Brixton Prison, ex p Perry* [1924] 1 KB 455, DC.

8 *R v Governor of Brixton Prison, ex p Jenkins* (16 April 1969, unreported), DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1226. Nature of applications for habeas corpus, applications for discharge and appeals.

1226. Nature of applications for habeas corpus, applications for discharge and appeals.

Neither the Civil Division nor the Criminal Division of the Court of Appeal has jurisdiction to hear an appeal from any judgment of the High Court in any criminal cause or matter¹. However, an appeal lies to the House of Lords, at the instance of the defendant or the prosecutor, from any decision of the High Court in a criminal cause or matter². Extradition proceedings³, an application for habeas corpus made in the course of extradition proceedings⁴ and an application for the applicant's discharge in Part III cases⁵ all fall within the expression 'criminal cause or matter'⁶, as do proceedings which are ancillary to or incidental to an application for habeas corpus in extradition proceedings (such as an order relating to the obtaining of evidence)⁷.

For an appeal to the House of Lords, a certificate that the decision involves a point of law of general public importance is not required⁸. Where the court grants leave to appeal against the issue of the writ of habeas corpus, it may make an order providing for the detention of the defendant, or directing that he may not be released except on bail⁹.

The High Court should not make an unqualified order for the release of a fugitive pending appeal to the House of Lords¹⁰.

1 See the Supreme Court Act 1981 s 18(1)(a); and CIVIL PROCEDURE vol 12 (2009) PARA 1692.

2 Administration of Justice Act 1960 s 1(1)(a) (amended by the Access to Justice Act 1999 s 63(1)); and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

3 See *Amand v Home Secretary* [1943] AC 147, [1942] 2 All ER 381, HL, approving *Ex p Woodhall* (1888) 20 QBD 832, CA; *R v Governor of Brixton Prison, ex p Levin* [1997] AC 741, [1997] 3 All ER 289, HL; *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346 at 1349, CA, per Lord Bingham of Cornhill CJ; and PARA 1259 post.

4 See *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346 at 1349-1352, CA, per Lord Bingham of Cornhill CJ; and the cases cited therein.

5 *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346 at 1353-1354, CA, per Lord Bingham of Cornhill CJ. As to an application for discharge see the Extradition Act 1989 s 11(3); and PARA 1183 ante. For the meaning of 'Part III cases' see PARA 1105 ante.

6 See notes 3-5 supra; and PARA 1259 post.

7 *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346 at 1354, CA, per Lord Bingham of Cornhill CJ.

8 See the Administration of Justice Act 1960 ss 1(2), 15(3) (as amended); ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247; and JUDICIAL REVIEW vol 61 (2010) PARA 679.

9 See *ibid* s 5(1) (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 244, 247.

10 *United States Government v McCaffery* [1984] 2 All ER 570, [1984] 1 WLR 867, HL.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1226 Nature of applications for habeas corpus, applications for discharge and appeals

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1227. Contents of an application for habeas corpus and abuse of process.

1227. Contents of an application for habeas corpus and abuse of process.

An applicant for habeas corpus is required to put forward in his application the whole of his case that is then fairly available to him. He cannot advance an application on one ground but at the same time keep back a separate ground of application for a second or renewed application to the court¹. The High Court has an inherent jurisdiction to exercise control over its own procedures including the jurisdiction to prevent those procedures being used vexatiously or in a manner which amounts to an abuse of process and, in an appropriate case, the High Court has the right to strike out habeas corpus proceedings as an abuse of process².

1 *Re Tarling* [1979] 1 All ER 981 at 987, sub nom *R v Governor of Pentonville Prison, ex p Tarling* [1979] 1 WLR 1417 at 1422, DC, per Gibson J. See also the Administration of Justice Act 1960 s 14(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 231.

2 *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579 at 584, DC, per Woolf LJ. In that case, the Divisional Court concluded that the application for habeas corpus was one which ought to be struck out as an abuse of the process of the court because it was clear that the applicant had embarked on a deliberate course of conduct which, by making successive applications for habeas corpus (the application in question being his sixth) was designed to use the machinery of the courts as part of a 'war of attrition' designed to wear down the government of the requesting state so as to prevent his return.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1227 Contents of an application for habeas corpus and abuse of process

NOTE 1--Administration of Justice Act 1960 s 14(2) amended: Constitutional Reform Act 2005 Sch 4 para 52, Sch 18 Pt 2.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(1) HABEAS CORPUS/1228. An unsuccessful application and costs.

1228. An unsuccessful application and costs.

If the court does not discharge the person in custody, it may order his continued committal to custody while awaiting his return to the requesting country on all or any of the charges or offences for which he is being returned, as it thinks fit¹. The court may award costs against the requesting or requisitioning country², but it invariably does not award costs against the governor of the prison where the offender is detained³.

1 See *R v Governor of Brixton Prison, ex p Rush* [1969] 1 All ER 316, [1969] 1 WLR 165, DC; *R v Governor of Pentonville Prison, ex p Myers* (6 December 1972, unreported), DC.

2 *R v Chief Metropolitan Stipendiary Magistrate, ex p Osman* [1988] 3 All ER 173, DC.

3 The governor of the prison is usually represented by the Crown Prosecution Service which also represents the requesting or requisitioning country. The governor will not normally appear on an application for habeas corpus in his own right; he will simply obey the order of the court.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(i) In general/1229. Introduction.

(2) JUDICIAL REVIEW

(i) In general

1229. Introduction.

The decisions of the magistrate¹ and of the Secretary of State² may be challenged before the High Court by way of an application for judicial review³. An application for a writ of habeas corpus ad subjiciendum does not lie against the Secretary of State as it is directed against the person having control of the individual⁴. However, applications for judicial review and habeas corpus may raise similar issues against various respondents and are often made at the same time⁵. In certain circumstances, the requesting state may also challenge a decision of the magistrate on the ground that it is wrong in law, by applying to the magistrate to state a case for the opinion of the High Court⁶.

The procedure for an application for judicial review is governed by statute⁷ and by rules of the court⁸. Any application for judicial review involves two stages: (1) the application for permission to apply for judicial review; and (2) if permission is granted, the substantive application⁹.

1 As to the role of the magistrate see PARA 1115 ante.

2 This includes decisions of the Minister of State or an Under Secretary of State taken on behalf of the Secretary of State: see the Extradition Act 1989 s 28(1); and PARA 1193 ante. See also *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56 at 64, DC, per Henry LJ: 'In our view this section [the Extradition Act 1989 s 28] makes it clear that Parliament is here limiting the devolution of the Secretary of State's responsibility under the so called *Carltona* principle to (but not beyond) the identified categories of junior Minister' As to the *Carltona* principle see *Carltona v Comrs of Works* [1943] 2 All ER 560, CA. As to the Secretary of State see PARA 1116 ante.

3 See PARA 1230 post. As to judicial review generally see CIVIL PROCEDURE vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

4 See PARAS 1217-1228 ante. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1531.

5 See in particular *Re Agkurt* (7 July 1998) Lexis, Enggen Library, Cases File, DC, per Lord Bingham CJ, where the application was properly to be regarded as an application for judicial review and the court was not deterred from recognising that fact by the decision of the applicant to mislabel his application.

6 As to case stated see PARAS 1251-1254 post.

7 See the Supreme Court Act 1981 s 31. As to the procedure for judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 664 et seq.

8 See CPR Sch 1 RSC Ord 53. As to the CPR see PARA 1217 note 2 ante.

9 See the Supreme Court Act 1981 s 31(3). Compare the application for habeas corpus where there is no requirement for permission: see PARA 1219 ante. Whilst 'leave of the court' is the statutory terminology, the Civil Procedure Rules refer to 'permission of the court'.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1229 Introduction

NOTES 7, 9--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

NOTE 7--1981 Act s 31 amended: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033.

NOTE 8--CPR Sch 1 RSC Ord 53 replaced: see now CPR Pt 54 (added by SI 2000/2092). See also *Practice Direction--Judicial Review* (2000) PD 54 (as amended).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(i) In general/1230. Decisions subject to judicial review.

1230. Decisions subject to judicial review.

The principal decisions in the extradition process which may be subject to challenge by way of an application for judicial review are:

- 81 (1) the issue of a provisional warrant by the magistrate¹;
- 82 (2) the Secretary of State's decision whether to cancel the provisional warrant²;
- 83 (3) the issue of a full order warrant by the magistrate³;
- 84 (4) the grant of the authority or order to proceed by the Secretary of State⁴;
- 85 (5) the magistrate's decision to commit⁵; and
- 86 (6) the Secretary of State's order for return or surrender warrant⁶.

1 See the Extradition Act 1989 s 8(1)(b), Sch 1 para 5(1)(b) (both prospectively amended); and PARAS 1188, 1212 ante. As to the role of the magistrate see PARA 1115 ante. As to judicial review generally see CIVIL PROCEDURE vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

2 See ibid s 8(4), Sch 1 para 5(2); and PARAS 1188, 1212 ante. As to the Secretary of State see PARA 1116 ante.

3 See ibid 8(1)(a), Sch 1 para 5(1)(a) (both prospectively amended); and PARAS 1187, 1211 ante.

4 See ibid s 7(4), Sch 1 para 4(2); and PARAS 1186, 1210 ante.

5 See ibid s 9(8), Sch 1 para 7(1) (as amended); and PARAS 1190, 1213 ante. Usually the magistrate's decision to commit an individual is challenged by way of an application for habeas corpus; sometimes an application for judicial review is also made. See PARA 1229 ante.

6 See ibid s 12(1), Sch 1 para 8(2); and PARAS 1193, 1215 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1231. The applicant.

(ii) Procedure

1231. The applicant.

The court may not grant leave to make an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates¹. In extradition proceedings the applicant will usually be the person whose return is sought, but it may also be the requesting state².

¹ See the Supreme Court Act 1981 s 31(3); and **JUDICIAL REVIEW** vol 61 (2010) PARA 656. Contrast the application for habeas corpus which must be made at the instance of the person detained (ie the person whose return is sought): see PARA 1217 ante. As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 207 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1531.

² See eg *R v Bow Street Magistrates' Court, ex p Government of Germany* [1998] QB 556, [1998] 2 WLR 498, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1231 The applicant

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1232. Time for the application.

1232. Time for the application.

The primary decision against which an application for judicial review is made is the order or warrant for return¹. In the case of return to foreign states in Part III cases², provision is made for a delay of seven days between the order for return being issued and the return of the individual³. At any time within that period, the individual may apply for permission to seek judicial review of the Secretary of State's decision⁴. In all other cases there is no express power to seek permission; however, it has been accepted that no lower standard should apply in these cases and that the rights apply equally to other Part III cases⁵ and to Schedule 1 cases⁶.

In any event, permission may be sought to challenge any decision by way of judicial review⁷. The application for permission to apply for judicial review must be lodged promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application is to be made⁸. In extradition proceedings there will be a particular burden on an applicant to explain any delay in making the application for permission⁹.

Where the court considers that there has been undue delay in making an application for judicial review and it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration, the court may refuse to grant permission to apply for judicial review or may refuse to grant any relief sought on the application¹⁰.

Permission to apply for judicial review (or, at the substantive hearing, the relief sought) will not be granted if the application is premature¹¹.

1 See PARA 1216 ante.

2 For the meaning of 'Part III cases' see PARA 1105 ante.

3 See the Extradition Act 1989 s 13(5); and PARA 1193 ante. The individual may waive this right: see s 13(5).

4 See *ibid* s 13(6); and PARA 1193 ante. If the individual applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending: s 13(7).

5 See the comments of Rose LJ in *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC.

6 'I comment that [the Extradition Act 1989] s 13 is the equivalent in Part III of the Act to paragraph 8 of the first schedule, the only difference in form being that s 13 expressly includes by s 13(6) the power to seek to challenge the Secretary of State's decision by way of judicial review, but the applicant would equally have such a right if the decision was one falling within the first schedule': *R v DPP, ex p Thom* [1996] Crim LR 116, (23 November 1994) Lexis, Enggen Library, Cases File, DC, per Glidewell LJ (sed quaere). For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

7 As to judicial review generally see CIVIL PROCEDURE vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

8 See CPR Sch 1 RSC Ord 53 r 4(1). As to the CPR see PARA 1217 note 2 ante. As to delay in applying for relief see CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 658.

9 See eg *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December (joined applications for habeas corpus and judicial review permission; permission refused on the basis that, in all the circumstances, the delay had not been adequately explained); *R v Secretary of State for the Home Department, ex p Wimbourne* (21 April 1999) Lexis, Enggen Library, Cases File, DC (applications were out of time).

10 See the Supreme Court Act 1981 s 31(6); and **JUDICIAL REVIEW** vol 61 (2010) PARA 658, 668. The courts have avoided formulating any precise definition or description of what constitutes detriment to good administration, but something more than inconvenience is needed: see *R v Secretary of State for the Home Department, ex p Oyeleye* [1994] Imm AR 268 (immigration case).

11 See eg *Re Schmidt* [1995] 1 AC 339 at 349, sub nom *R v Secretary of State for the Home Department, ex p Schmidt* [1994] 2 All ER 784 at 794, DC, per Roch LJ and at 355 and 799 per Sedley J (the Divisional Court's decision on the habeas application alone being appealed to and affirmed by the House of Lords: see *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65, HL). See also *R v Director of Public Prosecutions, ex p Thom* [1996] Crim LR 116, (23 November 1994) Lexis, Enggen Library, Cases File, DC. In this case, the applicant sought judicial review of Secretary of State's decision not to halt proceedings once the order to proceed had been issued; but it was held that the application was premature. The Secretary of State's functions to issue the order to proceed had been exhausted. He would consider this question only once he was exercising his discretion to issue a warrant for return, a stage which had not yet been reached. As to challenges before committal in extradition proceedings see PARA 1248 post.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1232-1235 Time for the application ... The substantive hearing

CPR Sch 1 RSC Ord 53 replaced: see now CPR Pt 54 (added by SI 2000/2092). See also *Practice Direction--Judicial Review* (2000) PD 54 (as amended).

1232 Time for the application

NOTE 10--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1233. Permission to apply for judicial review.

1233. Permission to apply for judicial review.

The applicant for permission to apply for judicial review must show not only that he has sufficient interest and that he has not delayed in making his application, but also that he has an arguable case on the merits¹. Permission will not be granted where the issue raised in the application has become academic as between the parties². As a general principle, before permission is given³, the applicant should have exhausted all remedies which are an alternative to judicial review and which would afford the same relief⁴. In extradition proceedings, the court is reluctant to intervene since the intent of the legislation is that the wide discretion conferred on the Secretary of State⁵ is to be the principal safeguard for the individual⁶.

Permission has been refused on the grounds that the application would go only needlessly to disrupt the extradition process and to postpone the machinery which itself provides the applicant with every proper opportunity to advance his case and to protect his position⁷.

An application for permission is made without notice being served on any other party⁸. The applicant must disclose to the judge all material matters of fact and law, whether or not they assist his application⁹.

The application is considered by a single judge who may determine the application without a hearing unless the applicant requests one¹⁰. Where permission is refused by the single judge (whether after a hearing or not) the applicant may renew the application by applying to the Divisional Court which considers the matter *de novo*¹¹.

If permission is granted, the respondent to the application may apply to have permission set aside¹². This may be on the basis that the applicant does not have an arguable case¹³ or that the applicant did not disclose all material matters of fact and law¹⁴. Such applications are not encouraged¹⁵.

When granting permission, the single judge or Divisional Court may direct that the case be considered for expedition. If not, then a party may apply for expedition, in the first instance to a Master of the Crown Office and, if that is refused, to the Divisional Court¹⁶.

Where an application for permission to apply for judicial review and an application for habeas corpus are both lodged, then every effort should be made to harmonise the proceedings. The normal practice is to list the application for permission to apply for judicial review first so that if it is granted then the substantive application can be heard with the application for habeas corpus. This is done because the same or similar points often arise upon both applications¹⁷. However, in some cases, given the urgency attached to applications for habeas corpus, the most practical course will be to hear the permission application with the application for habeas corpus so that if the court decided that permission should be granted then the argument for permission would also be treated as the argument for the substantive hearing¹⁸.

1 As to the locus standi of the applicant see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. As to the requirement for sufficient interest see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

2 See eg *R v Department of Trade and Industry, ex p Levitt* (16 January 1998, unreported), DC, in which permission was refused on the ground that the application had become 'substantially academic' so far as the applicant was concerned. This was said to be notwithstanding the undoubted general importance of some of the points raised in the application.

3 Alternatively, failure to pursue alternative remedies may be a basis for the court to exercise its discretion to refuse to grant the relief sought.

4 As to the exhaustion of remedies see **JUDICIAL REVIEW** vol 61 (2010) PARAS 657, 664. However, the existence of an alternative remedy is not destructive or determinative of the court's jurisdiction: see *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December DC.

5 le the discretion conferred on the Secretary of State in the Extradition Act 1989 s 12 (as amended) or Sch 1 para 8: see PARAS 1116, 1193, 1215 ante. As to the Secretary of State see PARA 1116 ante.

6 *Re Schmidt* [1995] 1 AC 339 at 379, sub nom *Schmidt v Federal Government of Germany* [1994] 3 All ER 65 at 77, HL, per Lord Jauncey of Tullichettle.

7 *R v Secretary of State for the Home Department, ex p Pinochet Ugarte* (27 May 1999) Lexis, Enggen Library, Cases File.

8 See CPR Sch 1 RSC Ord 53 r 3(2), (2A); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 664. As to the CPR see PARA 1217 note 2 ante. Although it is a without notice hearing, the practice continues that the respondent to the application may in fact be given notice and attend the hearing. For an example of an opposed without notice hearing see *R v Secretary of State for the Home Department, ex p Masterman* (10 February 1998) Lexis, Enggen Library, Cases File. Indeed, the parties are under an obligation to try to avoid the necessity for the start of proceedings: *Practice Direction--Protocols* (1999) PARA 4. At the date at which this volume states the law, there is no separate protocol for judicial review cases. Furthermore, if interim relief is to be sought at the hearing for permission to apply for the relief sought then the general rule is that notice should be given to the respondent: see CPR 23.4(1). Any other interested party (in practice, the requesting state) may attend the permission hearing and, like the respondent, will be heard.

9 See CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 663 et seq.

10 See CPR Sch 1 RSC Ord 53 r 3(3); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 664. The judge may himself request a hearing: *Begum v Secretary of State for the Home Department* [1990] Imm AR 1, sub nom *R v Secretary of State for the Home Department, ex p Begum* [1990] COD 107, CA (immigration case).

11 See CPR Sch 1 RSC Ord 53 r 3(4)(a) (see CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 672), which is applicable to extradition cases as they fall within the meaning of 'any criminal cause or matter': see PARA 1235 post. This is done by lodging a notice of intention at the Crown Office within 10 days of being served with notice of the single judge's refusal: see CPR Sch 1 RSC Ord 53 r 3(5). For an example see *R v Secretary of State for the Home Department, ex p Fuleihan* (2 February 1998) Lexis, Enggen Library, Cases File, DC.

As to appeals from the Divisional Court see PARA 1259 et seq post.

12 See CPR 23.10(1); and CIVIL PROCEDURE vol 11 (2009) PARA 312. The application must be made within seven days after the date on which the order was served on the respondent: see CPR 23.10(2). See also *R v Secretary of State for the Home Department, ex p Chinoy* [1991] COD 381, DC (Divisional Court confirmed that such an application could be made in extradition proceedings and that that court had jurisdiction to hear and determine such an application; in this respect there is no distinction between civil and criminal cases).

13 *R v Secretary of State for the Home Department, ex p Khalid Al-Nafeesi* [1990] COD 106.

14 *R v Secretary of State for the Home Department, ex p Chinoy* [1991] COD 381, DC.

15 '[T]he procedure to set aside is one that should be invoked very sparingly. It would be an entirely unfortunate development if the grant of leave *ex parte* were to be followed by applications to set aside *inter partes* which would then be followed, if the leave were not set aside, by a full hearing. The only purpose of such a procedure would be to increase costs and lengthen delays, both of which would be regrettable results ... The procedure is one to be invoked very sparingly and it is an order which the court will only grant in a very plain case': *R v Secretary of State for the Home Department, ex p Chinoy* [1991] COD 381 at 383, DC, per Bingham LJ.

16 As to expedition of cases generally see CIVIL PROCEDURE.

17 *Re Chetta* (30 April 1997) Lexis, Enggen Library, Cases File, DC.

18 *R v Secretary of State for the Home Department, ex p Osman* (30 July 1992) Lexis, Enggen Library, Cases File, [1993] Crim LR 214, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1232-1235 Time for the application ... The substantive hearing

CPR Sch 1 RSC Ord 53 replaced: see now CPR Pt 54 (added by SI 2000/2092). See also *Practice Direction--Judicial Review* (2000) PD 54 (as amended).

1233 Permission to apply for judicial review

NOTE 8--See now *Pre-action Protocol for Judicial Review*, appended to the Civil Procedure Rules 1998, SI 1998/3132.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1234. Interim matters.

1234. Interim matters.

Interim orders¹ which may be sought include orders for disclosure² and inspection of documents, for further information, for permission to cross-examine any person who has given written evidence³, or to dismiss the proceedings by consent of the parties. The test for ordering disclosure is whether the documents concerned would be likely to advance the applicant's case, and it is for the applicant to show that⁴. An order for disclosure will not be made if the applicant thereby seeks to go behind the respondent's affidavit unless there is a *prima facie* case for suggesting that the affidavit is in some respects incorrect⁵. Once an application for discovery has been made and refused, then a further application in respect of the same documents is apt to be defeated by reference either to issue estoppel or abuse of process unless there is some fresh evidence which was either not extant or not available at the time of the original application⁶.

Application may also be made for an interim injunction⁷. Where the order or warrant for return is challenged, such an application will usually be unnecessary. Specific provision is made in the case of return to foreign states under Part III of the Extradition Act 1989⁸ preventing the individual from being returned so long as proceedings for judicial review are pending⁹. In practice, this provision is applied in all cases.

In any event, where permission is granted then if the relief sought includes an order of prohibition or certiorari and the court so directs, the permission operates as a stay of the proceedings to which the application relates until the determination of the application or until the court otherwise orders¹⁰.

However, in certain circumstances an interim injunction having wider effect may be desirable¹¹. In exceptional circumstances, interim injunctive relief may be granted prior to permission being given¹². Since the adequacy of damages is rarely an issue in public law cases, the court will usually be engaged in considering only the balance of convenience¹³.

1 As to interim applications see CPR Sch 1 RSC Ord 53 r 8; and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 670. As to the CPR see PARA 1217 note 2 ante.

2 In *Re Osman* (28 February 1992) Lexis, Enggen Library, Cases File, [1992] Crim LR 741, DC, the Divisional Court was prepared to assume that in exceptional circumstances it might be appropriate to join a party purely for the purposes of discovery, although on the facts the court accepted that the proper course would have been to apply for a *subpoena duces tecum* (now a witness summons under CPR 34).

3 As to cross-examination of deponents in judicial review proceedings see **JUDICIAL REVIEW** vol 61 (2010) PARA 674.

4 '[T]he court must be careful not to indulge in speculation, but to see to it that there is a sound basis for believing that the documents concerned will advance the applicant's case.... [A]n application ... cannot be made for the purpose of making good supposed defects in the applicant's evidence, nor yet for the purpose of studying the respondents' documents in order to see if there is anything in them that will help the applicant's cause': *Re Osman* (20 June 1990) Lexis, Enggen Library, Cases File, DC, per Leggatt LJ.

5 See *Re Launder* (23 February 1996) Lexis, Enggen Library, Cases File, DC (applying *R v Secretary of State for the Environment, ex p London Borough of Islington* (19 July 1991) Lexis, Enggen Library, Cases File, [1991] NPC 90, CA).

6 *R v Governor of Brixton Prison, ex p Osman* [1992] 1 All ER 108, [1991] 1 WLR 281; *Re Osman* (15 November 1990) Lexis, Enggen Library, Cases File, DC.

7 See note 1 supra. As to the general principles for the grant of interim relief in judicial review cases see **JUDICIAL REVIEW** vol 61 (2010) PARA 717.

8 See the Extradition Act 1989 Pt III (ss 7-17) (as amended).

9 See *ibid* s 13(7); and PARA 1193 ante. As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

10 See CPR Sch 1 RSC Ord 53 r 3(10)(a); and **CIVIL PROCEDURE**; **JUDICIAL REVIEW** vol 61 (2010) PARA 668.

11 '[W]e cannot accept that the commencement of legal proceedings ... has any inhibiting effect upon the Secretary of State. If the Secretary of State is satisfied that the requirements of section 14(2) [of the Administration of Justice Act 1960] have not been complied with ... then he can proceed with his arrangements for the return of the person committed to the requesting state. Of course, if there is any real room for argument as to whether or not the requirements of section 14(2) have been complied with ... then no doubt the Secretary of State will consider it prudent to await the decision of the court, and if the person committed is fearful that the Secretary of State may not do so, he can always apply to the court for ... interim relief': *R v Secretary of State for Home Affairs, ex p Osman* (20 November 1992) Lexis, Enggen Library, Cases File, DC, per Kennedy LJ. See also *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244, [1992] 4 All ER 72, CA (immigration case; stay of decision of the Secretary of State to prevent the compulsory removal of an immigrant from the jurisdiction).

12 See **JUDICIAL REVIEW** vol 61 (2010) PARA 717.

13 The mere fact that permission has been granted does not mean that the applicant's case is sufficiently strong to justify the grant of an injunction: *R v Secretary of State for the Home Department, ex p Doorga* [1990] COD 109, sub nom *Doorga v Secretary of State for the Home Department* [1990] Imm AR 98, CA (immigration case).

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1232-1235 Time for the application ... The substantive hearing

CPR Sch 1 RSC Ord 53 replaced: see now CPR Pt 54 (added by SI 2000/2092). See also *Practice Direction--Judicial Review* (2000) PD 54 (as amended).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1235. The substantive hearing.

1235. The substantive hearing.

Within 14 days of the grant of permission to apply for judicial review, the applicant must apply to the Divisional Court of the Queen's Bench Division for a full hearing by issuing a claim form¹. The applicant must serve the claim form on all persons directly affected, which includes the requesting state, and the clerk to the magistrates' court if the challenge is to a decision of the magistrate². Copies of the evidence relied on by the applicant when seeking permission must be served with the claim form³. The applicant may not rely upon any ground or seek any remedy which is not set out in that evidence unless permission is given at the substantive hearing⁴. The applicant must give notice of any proposed application to every other party⁵. Any evidence in answer must (unless the court otherwise directs) be served by a respondent within 56 days of service on him of the claim form and the applicant's evidence⁶.

Any person who wishes to oppose the application must be heard at the substantive hearing provided that the court considers him to be a proper person to be heard⁷. This will often include the requesting state. The Attorney General may assign the task of representing the requesting state to the Director of Public Prosecutions⁸ in which case the Director is not to be regarded as a prosecutor but as a lawyer acting on behalf of a foreign client⁹.

Appeal lies from the decision of the Divisional Court to the House of Lords¹⁰.

1 As to the mode of applying for judicial review generally see CPR Sch 1 RSC Ord 53 r 5; and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 664. As to the CPR see PARA 1217 note 2 ante. The application is made to a Divisional Court because extradition cases fall within the meaning of 'any criminal cause or matter': see *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346, CA (see PARA 1226 ante). See also *Amand v Home Secretary* [1943] AC 147 at 162, [1942] 2 All ER 381 at 388, HL, per Lord Wright.

2 See CPR Sch 1 RSC Ord 53 r 5(3); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 664.

3 As to statements and evidence in applications for judicial review see CPR Sch 1 RSC Ord 53 r 6; and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 677.

4 See CPR Sch 1 RSC Ord 53 r 6(1), (2); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 673. It is unclear whether the grounds on which the applicant may rely at the substantive hearing may be restricted when permission is granted, although in *R v Secretary of State for the Home Department, ex p Zardari* (11 March 1998) Lexis, Enggen Library, Cases File, DC, the Lord Chief Justice noted without comment that Latham J had granted permission in order to seek one head of relief only. As to the court's general power to exclude an issue from consideration see CPR 3.1(2)(k); and CIVIL PROCEDURE vol 11 (2009) PARA 247.

5 See CPR Sch 1 RSC Ord 53 r 6(3); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARA 673.

6 See CPR Sch 1 RSC Ord 53 r 6(4). The court cannot expect the Secretary of State to depose to affidavits himself; provided that a suitable civil servant with appropriate knowledge and seniority does depose then that should suffice: *R v Secretary of State for the Home Department, ex p Rose* (9 March 1995) Lexis, Enggen Library, Cases File, DC.

7 As to the hearing of applications for judicial review see CPR Sch 1 RSC Ord 53 r 9(1); and CIVIL PROCEDURE; **JUDICIAL REVIEW** vol 61 (2010) PARAS 660, 664.

8 Ie under the Prosecution of Offences Act 1985 s 3(2)(g) (amended by the Criminal Justice Act 1987 s 15, Sch 2 para 13). The Crown Prosecution Service (of which the Director of Public Prosecutions is head) will represent the requesting state in all such cases: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1079 et seq.

9 *R v DPP, ex p Thom* [1996] Crim LR 116, (23 November 1994) Lexis, Enggen Library, Cases File, DC.

10 As to appeals to the House of Lords see PARA 1259 et seq post.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1232-1235 Time for the application ... The substantive hearing

CPR Sch 1 RSC Ord 53 replaced: see now CPR Pt 54 (added by SI 2000/2092). See also *Practice Direction--Judicial Review* (2000) PD 54 (as amended).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1236. Bail.

1236. Bail.

Bail is generally dealt with by the magistrates' court¹. In Part III cases², the magistrate may grant bail prior to³, on⁴, or at any time following⁵ committal. In Schedule 1⁶ cases, the magistrate may grant bail when the person whose return is sought is brought before him under the warrant⁷, but if the person is committed, then he is committed to prison⁸.

Any bail which has been granted by the magistrate will extend through any High Court proceedings⁹. Alternatively, the High Court has inherent jurisdiction to grant bail where either an application for permission or a substantive application is pending before it. It must be seised of some sort of proceedings. Thus, if permission to apply for judicial review is granted, the permission application immediately becomes merged with the substantive application so there is a continuous underlying proceeding. Similarly, if the permission application is adjourned, the court continues to be seised of the matter. If bail is refused by the single judge considering the permission application, a fresh bail application cannot be made to the Divisional Court until that court is seised of the application for judicial review¹⁰.

If the person whose return is sought makes an application for judicial review which fails, the Divisional Court can remand him in custody or on bail. If the application succeeds then the Divisional Court may order his discharge. However, the requesting state may make an application that the individual not be released or be released only on bail for so long as an appeal to the House of Lords is pending¹¹. If no such application is made and the individual is released then he is not liable to be detained again as a result of the decision of the House of Lords¹².

1 As to the procedure for bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165 et seq. As to the role of the magistrate see PARA 1115 ante.

2 For the meaning of 'Part III cases' see PARA 1105 ante.

3 See the Extradition Act 1989 s 9(2) (as amended); and PARA 1189 ante.

4 See *ibid* s 9(8); and PARA 1190 ante.

5 See *ibid* s 9(10); and PARA 1190 ante.

6 For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

7 See the Extradition Act 1989 s 1(3), Sch 1 para 6(1) (as amended); and PARA 1213 ante.

8 See *ibid* Sch 1 para 7(1); and PARA 1213 ante. However, a bail application may be made to the High Court pursuant to CPR Sch 1 RSC Order 79 r 9: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1192. As to the CPR see PARA 1217 note 2 ante.

9 See note 1 *supra*.

10 *R v Secretary of State for the Home Department, ex p Hill* (20 November 1996, unreported).

11 See the Administration of Justice Act 1960 s 5 (as amended); para 1260 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1191.

12 See *ibid* s 5(5) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1191. See also *Government of the United States of America v McCaffery* [1984] 1 WLR 867 at 873, HL, per Lord Diplock.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(ii) Procedure/1237. Costs.

1237. Costs.

The Divisional Court has a general discretion as to costs¹. An award for costs may be made following the permission hearing, although usually no award is made even if the hearing was contested². The general rule at the substantive hearing is that the unsuccessful party will be ordered to pay the costs of the successful party³. Where the applicant is the person whose return is sought and he is successful, an order for costs from central funds may be made in his favour⁴. An applicant who is the person whose return is sought will often be legally aided; in which case, if he is unsuccessful, no order for costs will be made⁵.

An order for costs may be made against a third party who is maintaining the proceedings on behalf of the applicant⁶. In very special cases, costs may be awarded on an indemnity basis⁷.

1 As to the discretion as to costs see the Supreme Court Act 1981 s 51(1) (as substituted); and **JUDICIAL REVIEW** vol 61 (2010) PARA 681. See also *R v Chief Metropolitan Stipendiary Magistrate, ex p Osman* [1988] 3 All ER 173, DC. As to costs generally see CPR 44; and CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq. As to the CPR see PARA 1217 note 2 ante.

2 See CIVIL PROCEDURE. Costs were awarded in favour of the Secretary of State (though not in favour of the requesting state) in *R v Secretary of State for the Home Department, ex p Pinochet Ugarte* (27 May 1999) Lexis, Enggen Library, Cases File, where the application was made on the grounds that, whereas the permission hearing is generally a matter between the applicant and the court, in that case a contentious matter had been resolved and it could only properly have been resolved at such a hearing.

3 See CPR 44.3(2); and CIVIL PROCEDURE.

4 See the Prosecution of Offences Act 1985 s 16(5); applied in *R v Secretary of State for the Home Department, ex p Launder* (6 August 1996) Lexis, Enggen Library, Cases File, (1996) Times, 29 October, DC (the substantive decision being overturned on appeal *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL).

5 As to legal aid generally see LEGAL AID.

6 *R v Secretary of State for the Home Office, ex p Osman* (22 September 1992) Lexis, Enggen Library, Cases File, DC. As to costs orders in favour of or against non-parties see CPR 48.2; and CIVIL PROCEDURE vol 11 (2009) PARA 217.

7 See CIVIL PROCEDURE. For an example see *R v Secretary of State for the Home Office, ex p Osman* (30 November 1992) Lexis, Enggen Library, Cases File, DC, where two previous applications had been held to have been an abuse of process.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1237 Costs

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 4--Prosecution of Offences Act 1985 s 16(5) amended: Constitutional Reform Act 2005 Sch 9 para 41(3) (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/A. IN GENERAL/1238. Grounds available.

(iii) Grounds of Review

A. IN GENERAL

1238. Grounds available.

The grounds on which administrative action is subject to control by judicial review are conveniently classified as: (1) illegality; (2) irrationality; and (3) procedural impropriety¹.

¹ As to the grounds for judicial review generally see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, [1984] 3 All ER 935 at 950-951, HL, per Lord Diplock; and **JUDICIAL REVIEW** vol 61 (2010) PARA 602. As to illegality, irrationality and procedural impropriety in the context of extradition see PARA 1239 et seq post.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/B. ILLEGALITY/1239. In general.

B. ILLEGALITY

1239. In general.

In its broadest form, 'illegality' can cover all grounds for judicial review. In its narrower form, however, it encompasses challenges on the ground that the decision-maker has based a decision on an error of law¹. A decision which is *ultra vires* in this narrow sense will involve an error of law and may, in an appropriate case, be challenged either by way of judicial review² or by way of habeas corpus³, or the two in PARALLEL⁴.

1 See *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL; and **JUDICIAL REVIEW** vol 61 (2010) PARA 602.

2 For examples of challenge by way of judicial review see *Re Nielsen* [1984] AC 606, sub nom *Government of Denmark v Nielsen* [1984] 2 All ER 81, HL (successful challenge of the magistrate's decision); *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] AC 42, sub nom *Bennett v Horseferry Road Magistrates' Court* [1993] 3 All ER 138, HL (successful challenge of magistrates' court on the ground of exceeding its jurisdiction; a case involving extradition to the United Kingdom); *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999, [1990] 1 WLR 878 (unsuccessful challenge of the decision of the magistrate on the grounds that he had improperly delegated his powers to the clerk of the court); *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56 (unsuccessful challenge based on arguments of improper delegation by the Secretary of State to a Minister of State).

As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

3 As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 207 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1531.

4 As to the overlap between judicial review and habeas corpus see PARA 1255 post.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/C. IRRATIONALITY/1240. In general.

C. IRRATIONALITY

1240. In general.

A decision may be classified as irrational if the decision-maker acts in bad faith or for improper purposes, or takes into account irrelevant considerations or fails to take into account relevant considerations, or if his decision is perverse¹.

¹ See *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL; and **JUDICIAL REVIEW** vol 61 (2010) PARAS 602, 621 et seq. A decision taken in bad faith will, in this context, also be an abuse of process: see PARA 1116 ante. As to perversity see PARA 1242 post. The issue of bad faith also arises in the context of the accusation against the defendant: see the Extradition Act 1989 ss 11(3)(c) (see PARA 1183 ante), 12(2)(a)(iii) (see PARA 1193 ante). See also *Re Calis* (19 November 1993) Lexis, Enggen Library, Cases File, DC; and PARA 1116 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/C. IRRATIONALITY/1241. Considerations.

1241. Considerations.

In exercising his discretion as to whether to order the defendant's return, the Secretary of State¹ is under an obligation to take into account all relevant considerations and to ignore all irrelevant considerations². Thus, whilst the Secretary of State is not bound by the Divisional Court's earlier rulings as to the passage of time in a case, he cannot ignore that the representations made to him by the applicant are similar to those made to, and rejected by, the court³.

1 As to the Secretary of State see PARA 1116 ante.

2 See eg *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC, where one ground for striking down the minister's decision was that he had failed to take into account matters which statute required him to take into account.

3 *R v Secretary of State for the Home Department, ex p Rose* (9 March 1995) Lexis, Enggen Library, Cases File, DC. See also *R v Secretary of State for the Home Department, ex p Launder* (6 August 1996) Lexis, Enggen Library, Cases File, (1996) Times, 29 October DC (revsd on different grounds [1997] 3 All ER 961, [1997] 1 WLR 839, HL), where it was held that the Secretary of State gave proper consideration to the Divisional Court's findings and reached a similar conclusion to that court.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/C. IRRATIONALITY/1242. Perversity.

1242. Perversity.

The court may interfere with a decision which is so unreasonable that no reasonable body could have come to it, but the reviewing court is not entitled to substitute its own objectively reasonable decision¹.

The scope for such argument about the magistrate's decision will be limited. A magistrate would be said to act perversely if there was no credible evidence to support committal on a charge². However, challenges on this basis are almost invariably by way of application for habeas corpus³, although judicial review⁴ is sometimes sought in addition.

The Secretary of State has a broad discretion as to whether to order the defendant's return, and therefore there is limited scope for the courts to challenge that discretion⁵. Challenges on grounds of perversity have rarely succeeded⁶. Perversity will not be inferred simply from an absence of reasons for the decision unless all other known facts and circumstances appear to point overwhelmingly in favour of a different decision⁷.

1 As to this ground of judicial review (often termed '*Wednesbury* unreasonableness') see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223, [1947] 2 All ER 680, CA; and **JUDICIAL REVIEW** vol 61 (2010) PARAS 602, 617. As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

2 See eg *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701 at 722, [1990] 1 WLR 277 at 301, DC, per Lloyd LJ (habeas corpus application). 'It is important to keep in mind that the role of the Divisional Court in adjudicating on the issue of sufficiency of evidence to justify a committal in extradition proceedings is supervisory only. The court can only interfere if it is of the view that the decision of the magistrate on the evidence before him was perverse. It cannot otherwise substitute its decision for his': *R v Governor of Brixton Prison, ex p Bekar* [1997] 24 LS Gaz R 31, Times, 10 June, DC, per Auld LJ (habeas corpus application).

3 As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 207 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1531.

4 As to judicial review generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

5 As to the discretion of the Secretary of State whether to order return see the Extradition Act 1989 s 12 (as amended) (see PARA 1193 ante) and Sch 1 para 8 (see PARA 1215 ante). As to the Secretary of State see PARA 1116 ante.

6 For a notable example of a perversity challenge succeeding see *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC (the minister had not commented on the inordinate delay in instituting proceedings; it was wholly unreasonable for him to conclude that it would not be oppressive by reason of the passage of time to extradite the applicant); distinguished in *R v Secretary of State for the Home Department, ex p Rose* (9 March 1995) Lexis, Enggen Library, Cases File, DC.

Examples of challenges unsuccessful on this ground are manifold and include: *R v Secretary of State for the Home Department, ex p Chinoy* [1991] COD 381, DC; *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC; *R v Secretary of State for the Home Department, ex p Masterman* (10 February 1998) Lexis, Enggen Library, Cases File (application for permission to apply for judicial review).

7 *R v Secretary of State for the Home Department, ex p Hagan* (25 May 1994) Lexis, Enggen Library, Cases File, DC, per Kennedy LJ (applying *Lonrho plc v Secretary of State for Trade and Industry* [1989] 2 All ER 609 at 619-621, sub nom *R v Secretary of State for Trade and Industry, ex p Lonrho plc* [1989] 1 WLR 525 at 539-540).

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/D. PROCEDURAL IMPROPRIETY/1243. In general.

D. PROCEDURAL IMPROPRIETY

1243. In general.

Procedural impropriety as a ground for judicial review is intended to encompass both breach of natural justice and the failure of the administrative tribunal to observe procedural rules¹. The two elements of natural justice are said to be impartiality (or the rule against bias) and the right to be heard (or the rule of fairness)².

In extradition proceedings, the requirements of fairness involve in particular three matters: (1) the individual's right to present his case fully³; (2) the individual's right to know the details of the case against him⁴; and (3) the duty on the public body to give reasons for its decision⁵. These are by no means absolute rights and the list is not exhaustive⁶. What fairness requires is a proper balance between the basic requirements of justice on the one hand and the manifest intent of the statute on the other that there should not be a lengthy and elaborate trial before the individual can be surrendered for trial somewhere else⁷.

1 See *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL; and **JUDICIAL REVIEW** vol 61 (2010) PARA 602. As to breach of natural justice see **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq.

2 See *Kanda v Government of Malaya* [1962] AC 322 at 337, [1962] 2 WLR 1153 at 1161, PC. As to the rule against bias (often expressed in the maxim *nemo iudex in causa sua*) see **JUDICIAL REVIEW** vol 61 (2010) PARA 631 et seq. As to the right to be heard (often expressed in the maxim *audi alteram partem*) see **JUDICIAL REVIEW** vol 61 (2010) PARA 639 et seq.

As to the duty to act fairly see *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC.

'[S]ave in a very general sense it is seldom of value to try to extrapolate from one Act of Parliament to another in determining whether a particular administrative decision adopted by the Secretary of State in a particular situation was unfair': *R v Secretary of State for the Home Department, ex p McQuire (or McGuire)* (1995) 10 Admin LR 534 at 543, DC, per Roush J.

Of course, the grant of any remedy is discretionary even if unfairness is found. Thus, in *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December, DC (a case which included an application for permission to apply for judicial review), Pill J remarked 'There was no duty upon the United States Government ... to disclose the documents to which we have been referred. Further, the magistrate was in no way at fault, and that in itself may limit the circumstances in which the court will intervene when a breach of principles of natural justice is alleged.' See also *R v Secretary of State for the Home Department, ex p Chetta* supra per Rose LJ, where the applicants claimed that they were given an inadequate opportunity to make representations but, there being no such thing as a technical breach of natural justice, they were under a duty to show that there was something material they wished to say.

3 See PARA 1245 post.

4 See PARA 1246 post.

5 See PARA 1247 post.

6 '[T]he rules of natural justice, or of fairness, are not cut and dried. They vary infinitely': *R v Secretary of State for the Home Department, ex p Santillo* [1981] QB 778 at 795, [1981] 2 WLR 362 at 374, CA, per Lord Denning MR (deportation case). As to other rules of natural justice that have been suggested see **JUDICIAL REVIEW** vol 61 (2010) PARA 639. The three matters listed in heads (1)-(3) in the text are not exhaustive: see eg *R v Secretary of State for the Home Department, ex p The Kingdom of Belgium* (15 February 2000, unreported)

(on the exceptional facts of this case fairness required disclosure to interested states of the confidential medical report prepared for the Secretary of State concerning Senator Pinochet's fitness to stand trial).

7 *R v Secretary of State for the Home Department, ex p McQuire (or McGuire)* (1995) 10 Admin LR 534, DC.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1243 In general

NOTE 2--The disclosure requirements of the European Convention on Human Rights, rather than those of standard civil or criminal proceedings, should be applied in extradition hearings: *R (on the application of the Government of the United States of America) v Bow Street Magistrates' Court*; *R (on the application of the Central Examining Court, Madrid) v Bow Street Magistrates' Court* [2006] EWHC 2256 (Admin), [2007] 1 WLR 1157.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/D. PROCEDURAL IMPROPRIETY/1244. Bias.

1244. Bias.

A decision taken by a person deemed in law to be biased will be subject to review. An individual may either be automatically disqualified or be disqualified on the grounds that there is sufficient risk that he may be biased¹. A person will be automatically disqualified if he has a direct pecuniary interest in the outcome of the proceedings, however small that interest², or if the decision would lead to the promotion of a cause which connected the judge with one of the parties³.

1 As to bias see **JUDICIAL REVIEW** vol 61 (2010) PARA 631 et seq. As to the likelihood of bias see **JUDICIAL REVIEW** vol 61 (2010) PARA 633.

2 As to disqualification for financial interest see **JUDICIAL REVIEW** vol 61 (2010) PARA 632.

3 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [1999] 1 All ER 577, [1999] 2 WLR 272, HL. '[A]lthough the cases have all dealt with automatic disqualification on the grounds of pecuniary interest, there is no good reason in principle for so limiting automatic disqualification. The rationale of the whole rule is that a man cannot be a judge in his own cause. In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties': *R v Bow Street Metropolitan Magistrate, ex p Pinochet Ugarte (No 2)* supra at 588 and 283 per Lord Browne-Wilkinson.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/D. PROCEDURAL IMPROPRIETY/1245. The right of the person whose return is sought to make representations.

1245. The right of the person whose return is sought to make representations.

In cases of return to foreign states under Part III of the Extradition Act 1989¹, the person whose return is sought has a right to make representations prior to an order for return being made as to why he should not be returned to the foreign state². These express provisions do not apply in other Part III cases³ or in Schedule 1 cases⁴, although the practice of the Secretary of State has for some years been to afford the right to make representations to the person whose return is sought⁵.

A long-standing practice may amount to a representation by the Secretary of State and give rise to a legitimate expectation in the representee that he be given an opportunity to be heard before a decision adverse to him is taken⁶. There may be an overlap in such cases with the court's jurisdiction to refuse to tolerate proceedings which are an abuse of process⁷.

1 See the Extradition Act 1989 Pt III (ss 7-17) (as amended).

2 See *ibid* s 13(2); and PARA 1193 ante.

3 For the meaning of 'Part III cases' see PARA 1105 ante.

4 For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

5 As to the Secretary of State see PARA 1116 ante.

6 See *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149 at 170, [1969] 1 All ER 904 at 908-909, CA, per Lord Denning MR (immigration case); *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 408-409, [1984] 3 All ER 935 at 949-950, HL, per Lord Diplock; *R v Secretary of State for the Home Department, ex p McQuire (or McGuire)* (1995) 10 Admin LR 534, DC (no requirement of a lengthy exchange of representations and counter-representations). As to the doctrine of legitimate expectation generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 649.

7 See *R v Secretary of State for the Home Department, ex p Peters* (25 March 1998) Lexis, Enggen Library, Cases File, DC, in which the applicant sought to argue that he had a legitimate expectation that the United States authorities would abide by their alleged agreement not to pursue extradition proceedings and that the Secretary of State would hold the United States of America to that agreement. However, this adds nothing to the allegations of abuse of process: see *Chu Piu-wing v A-G* [1984] HKLR 411 at 417-418 per McMullin VP ('there is a clear public interest to be observed in holding officials of the state to promises made by them in full understanding of what is entailed by the bargain'), cited in *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 at 61, sub nom *Bennett v Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 150, HL, per Lord Griffiths.

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1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/D. PROCEDURAL IMPROPRIETY/1246. The right of the person whose return is sought to know the case against him.

1246. The right of the person whose return is sought to know the case against him.

A person who has the right to make representations ought to be told what the case against him is so that his representations can be directed towards that case¹. However, the extent to which the Secretary of State² must disclose the information which he has received depends on the proper balance between the basic requirements of justice and the manifest intent of the Extradition Act 1989 that there should not be a lengthy and elaborate trial before the individual can be surrendered for trial somewhere else³.

There is no general obligation on the requesting state to disclose to the magistrate⁴ (and thereby the individual) all of the evidence which it has in its possession⁵.

1 See **JUDICIAL REVIEW** vol 61 (2010) PARA 640.

2 As to the Secretary of State see PARA 1116 ante.

3 *R v Secretary of State for the Home Department, ex p McQuire (or McGuire)* (1995) 10 Admin LR 534 at 537-538, DC, per Staughton LJ. '... it is said that the Home Secretary should, for example, first have sent a 'minded to refuse' letter, so as to give [Mr McGuire] an opportunity to comment upon the Home Secretary's thinking. In my judgment that is exactly the sort of procedural elaboration which is *not* required by Schedule 1 to the Extradition Act [1989], with its relatively short time-limit. The question is whether the fugitive should be sent for trial somewhere else. There should not be a trial here in the process of answering that question. Fairness does not require that': *R v Secretary of State for the Home Department, ex p McQuire (or McGuire)* supra at 541 per Staughton LJ. See also the comments of Rose LJ in *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported), DC.

4 As to the role of the magistrate see PARA 1115 ante.

5 See *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December, DC, in which the requesting state was the United States of America and so it had to establish a prima facie case; cf cases falling under the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) (see PARA 1120 et seq ante).

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1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iii) Grounds of Review/D. PROCEDURAL IMPROPRIETY/1247. The duty to give reasons.

1247. The duty to give reasons.

There is no general duty on either the magistrate¹ or on the Secretary of State² to give reasons for his decision. However, such a duty may be implied in the particular circumstances of a case³. Thus, where a legally qualified magistrate is dealing with an extradition case, its importance to the parties (especially to the person whose extradition is being sought) means that in almost every case he should explain his reasons for his conclusions, albeit quite briefly⁴. Where there is no duty to give reasons, the absence of reasons for a decision cannot of itself provide any support for the suggested irrationality of the decision unless all other known facts and circumstances appear to point overwhelmingly in favour of a different decision⁵.

1 *Rey v Government of Switzerland* [1998] 3 WLR 1 at 10, PC. As to the role of the magistrate see PARA 1115 ante.

2 *R v Secretary of State for the Home Department, ex p Hagan* (25 May 1994) Lexis, Enggen Library, Cases File, DC.

3 As to the obligation to give reasons see **JUDICIAL REVIEW** vol 61 (2010) PARA 644, 646, 647. In *Rey v Government of Switzerland* [1998] 3 WLR 1 at 10, the Privy Council entered a 'cautionary note' ('it is unnecessary in the present case to consider whether in the great diversity of cases which come before magistrates in extradition proceedings the principle of fairness may in particular circumstances require a magistrate to give reasons').

In *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839 at 856, HL, Lord Hope referred to the Secretary of State's 'commendable departure from the normal procedure in extradition cases' in giving reasons for his decision. In *R v Secretary of State for the Home Department, ex p Chetta* (6 June 1996) Lexis, Enggen Library, Cases File, (1996) Times, 11 July, DC, the court accepted on an application for permission to apply for judicial review that it was at the very least arguable that the Secretary of State was required to give reasons for an exercise of his discretion under Extradition Act 1989 s 12 (as amended), and that it was arguable that his present practice only to give the reasons after a challenge to the sufficiency of his reasons had been made was wrong (one example of that practice being *R v Secretary of State for the Home Department, ex p Peters* (25 March 1998) Lexis, Enggen Library, Cases File). However, on the substantive application, the Divisional Court refused to rule on the question since the Secretary of State had by that time given reasons and the question had become academic as between the parties: *R v Secretary of State for the Home Department, ex p Peters* (8 November 1996, unreported). To the same effect, see also *R v Secretary of State for the Home Department, ex p Gesugrande* (23 January 1998, unreported) (application for permission to apply for judicial review). At the substantive hearing the Divisional Court said that, because of the structure of the Extradition Act 1989, it was better that the Secretary of State should give reasons: *R v Secretary of State for the Home Department, ex p Gesugrande* (24 April 1998) Lexis, Enggen Library, Cases File. See also *R v Secretary of State for the Home Department, ex p Agkurt* (28 October 1997, unreported) (application for permission to apply for judicial review), in which Sedley J accepted that it was arguable that there was a duty to give reasons at the time of the decision. That argument was not pursued at the substantive hearing, though Kennedy LJ observed: 'I am firmly of the opinion that where representations are made pursuant to section 13(2) the Secretary of State should respond, even if only very briefly, before or at the time when he makes an order pursuant to section 12(1). Common courtesy so demands ...': *R v Secretary of State for the Home Department, ex p Agkurt* (12 February 1998) Lexis, Enggen Library, Cases File, (1998) Times, 5 March, DC.

See also *R v Secretary of State for the Home Department, ex p Launder* (6 August 1996) Lexis, Enggen Library, Cases File, (1996) Times, 29 October, DC, per Henry LJ (revsd on different grounds *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL): 'Nor do we consider that any "reasons" objection can here succeed, though the wide-ranging nature of the representations [to the Secretary of State] inevitably meant that not every point was dealt with'.

4 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* [1997] 3 WLR 1156 at 1168, DC, per Kennedy LJ. This approach was adopted by the magistrate in *Spain v Pinochet Ugarte* (8 October 1999, unreported).

5 *Lonrho plc v Secretary of State for Trade and Industry* [1989] 2 All ER 609 at 619-620, sub nom *R v Secretary of State for Trade and Industry, ex p Lonrho plc* [1989] 1 WLR 525 at 539, HL, per Lord Keith; *R v Secretary of State for the Home Department, ex p Hagan* (25 May 1994) Lexis, Enggen Library, Cases File, DC; *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56 at 70 (inadequate reasons led to the Secretary of State's decision that it would not be oppressive by reason of passage of time to extradite being held unreasonable). As to perversity see PARA 1242 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iv) Decisions for Review/1248. Challenges before committal.

(iv) Decisions for Review

1248. Challenges before committal.

Challenges prior to the committal stage should be brought only in clear cases of error¹.

¹ *Government of the United States of America v Bowe* [1990] 1 AC 500 at 526, [1989] 3 All ER 315 at 328, PC (for example, it is clear that the extradition proceedings must fail where the order to proceed had been issued by the wrong person). See also *R v Secretary of State for the Home Department, ex p Pinochet Ugarte* (27 May 1999) Lexis, Enggen Library, Cases File, in which Ognall J refused permission to apply for judicial review of the authority to proceed, saying: 'The overriding consideration must be that the extradition process is conducted in such a way that the ultimate decision determining whether or not the applicant should be extradited is made in justice in as fully informed a manner as the evidence to be adduced and the representations directed to it will afford. The presently proposed challenge does not serve that purpose. It will, in my clear judgment, go only needlessly to disrupt the extradition process and to postpone the machinery which will afford the applicant every proper opportunity to advance his case and protect his position.' Note that prior to this application there had been three substantive hearings before the Divisional Court and a further three before the House of Lords. Cf *R v Secretary of State for the Home Office, ex p Yazici* (27 March 1996) Lexis, Enggen Library, Cases File; *R v Secretary of State for the Home Department, ex p Hill* [1997] 2 All ER 638, 147 NLJ 525 (both applications to challenge the Secretary of State's decision to issue an authority to proceed under the Extradition Act 1989 s 7(4): see PARA 1186 ante).

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1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iv) Decisions for Review/1249. Decisions of the magistrate.

1249. Decisions of the magistrate.

Most challenges to the magistrate's decision are brought by way of an application for habeas corpus¹. The court will be reluctant to intervene with the substantive decision of the magistrate², unless there is a clear error of law³ or the decision is wholly irrational⁴. The person whose return is sought cannot argue that there is equivocal evidence and that the court should enter into a consideration as to whether the magistrate has properly exercised his discretion on that evidence⁵. The test is to consider whether there was evidence on which a reasonable magistrate properly directed could commit⁶. However, the court may be prepared to quash a decision of the magistrate if it is beyond the magistrate's powers⁷ or procedurally unfair⁸.

1 As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1531. As to the role of the magistrate see PARA 1115 ante.

2 'The English courts have always been reluctant to interfere with committal proceedings when these committal proceedings are to be followed by a trial in this country. The same approach can be detected with regard to committal proceedings with a view to the return of an alleged offender:' *Re Osman's Application* (28 February 1992) Lexis, Enggen Library, Cases File, [1992] Crim LR 741, DC, per Woolf LJ.

3 See *R v Bow Street Magistrates' Court, ex p Government of Germany* [1998] QB 556, [1998] 2 WLR 498, DC (application for judicial review was granted; the magistrate had erred in refusing to commit the individual simply because she was not present in court).

In *Re Hagan* (15 December 1992) Lexis, Enggen Library, Cases File, (1992) Times, 28 December, DC, the applicant argued that the magistrate had misconstrued his powers and had the same power to refuse to commit in extradition proceedings on grounds of abuse of process as he had when asked to commit for trial; this proposition was rejected. The scope of the magistrate's powers was considered in *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL. As to error in law see PARA 1239 ante.

4 *R v Governor of Holloway Prison, ex p Siletti* (1902) Cox CC 353, DC. As to irrationality see PARA 1240 et seq ante.

5 *R v Governor of Holloway Prison, ex p Siletti* (1902) Cox CC 353 at 357-358, DC, per Bingham J.

6 *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701 at 722-723, [1990] 1 WLR 277 at 301, DC, per Lloyd LJ (application for habeas corpus).

7 *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999, [1990] 1 WLR 878 (unsuccessful challenge based on improper delegation of powers by the magistrate to the chief clerk). As to the distinction between the function of the courts and that of the Secretary of State see PARA 1250 post.

8 Eg due to failure to give reasons: see *Rey v Government of Switzerland* [1998] 3 WLR 1; and PARA 1247 ante. See also *R v Bow Street Magistrates' Court, ex p Government of Germany* [1998] QB 556, [1998] 2 WLR 498 (magistrate's improper refusal to commit in absence of person whose return was sought).

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(2) JUDICIAL REVIEW/(iv) Decisions for Review/1250. Decisions of the Secretary of State.

1250. Decisions of the Secretary of State.

Challenge to the exercise of discretion by the Secretary of State¹ may be made by way of an application for judicial review². Specific provision is made for judicial review of the order to return in Part III cases³ involving a foreign state⁴, and no lower standard should apply in other Part III cases or in Schedule 1 cases⁵. On such an application, the Divisional Court will intervene to quash the decision on grounds that the Secretary of State has made an error of law⁶, has breached the principles of fairness or has acted irrationally⁷.

In considering the rationality of the Secretary of State's decision, the court will afford him the widest latitude. Whilst it is for the courts to say whether the statutory conditions have been complied with to the extent that an individual can be surrendered, it is for the Secretary of State to decide whether, having regard to all the circumstances, the individual should be surrendered⁸. The court must bear in mind that decisions as to extradition can be highly politically charged⁹. However, the court will ensure that the Secretary of State has taken into account all relevant considerations and has disregarded any irrelevant considerations¹⁰. The Secretary of State should take into account matters such as delay, compassionate considerations and any additional evidence that emerges after the magistrate has considered the case¹¹. He cannot ignore representations as to whether the individual will receive a fair trial on the ground that the requesting country will observe its treaty obligations¹². Provided that he has regard to all relevant considerations, the question of what inquiries are reasonably required and what weight he should attach to the information he receives are matters for his judgment, subject only to intervention by the court on the ground of irrationality¹³. There is not as a matter of law a requirement upon him to consider the evidence afresh in every case¹⁴.

It is a general principle that the exercise of discretion which has implications on an individual's fundamental human rights will be subject to most anxious scrutiny¹⁵. The more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable¹⁶. However, whilst this principle is recognised in the context of extradition proceedings, the reviewing court still exercises 'great caution'¹⁷.

The court will also avoid intervening where to do so would impugn the validity of the act of a sovereign state done abroad by a sovereign authority¹⁸.

1 As to the Secretary of State see PARA 1116 ante.

2 See PARA 1229 et seq ante. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1530.

3 For the meaning of 'Part III cases' see PARA 1105 ante.

4 See the Extradition Act 1989 s 13(6); and PARA 1193 ante.

5 *R v Secretary of State for the Home Department, ex p Chetta* (8 November 1996, unreported) (a Part III case relating to a Commonwealth country). For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

See also *R v DPP and the Secretary of State for Home Affairs, ex p Thom* (23 November 1994) Lexis, Enggen Library, Cases File [1996] Crim LR 116, DC (Secretary of State has no power to reconsider an order already made under the Extradition Act 1989 s 1(3), Sch 1 para 4(2) (see PARA 1210 ante), although he may issue a second order).

As to the inappropriateness of joining the Secretary of State to an application for habeas corpus see PARA 1219 ante.

6 See PARA 1239 ante.

7 As to irrationality see PARA 1240 et seq ante. The rare cases in which a challenge on grounds of perversity have succeeded include *R v Secretary of State for the Home Department, ex p Sinclair* [1992] Imm AR 293, DC; *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, DC (distinguished on various grounds in *R v Secretary of State for the Home Department, ex p Rose* (9 March 1995) Lexis, Enggen Library, Cases File, DC).

8 *Royal Government of Greece v Governor of Brixton Prison* [1971] AC 250 at 281, [1969] 3 All ER 1337 at 1341, HL, per Lord Morris of Borth-y-Gest (on appeal from *R v Governor of Brixton Prison, ex p Kotronis* [1969] 3 All ER 304, [1969] 3 WLR 528, DC). It is not for the court to decide whether it or any other Secretary of State might have reached a different decision: see *R v Secretary of State for the Home Department, ex p Gesugrande* (23 January 1998, unreported).

9 *R v Secretary of State for the Home Office, ex p Osman* (30 July 1992) Lexis, Enggen Library, Cases File, [1993] Crim LR 214, DC, per Woolf LJ.

10 See PARA 1241 ante.

11 *R v Secretary of State for the Home Department, ex p Hagan* (15 December 1993) Lexis, Enggen Library, Cases File, DC.

12 'If issues of that kind are raised in a responsible manner, by reference to evidence and supported by reasoned argument, he must consider them. The greater the perceived risk to life or liberty, the more important it will be to give them detailed and careful scrutiny': *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961 at 977, [1997] 1 WLR 839 at 855, HL, per Lord Hope of Craighead.

13 *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174, [1998] 4 All ER 635. It is impossible to contend that political considerations and the like cannot justify a decision to withhold authority: *R v Secretary of State for the Home Department, ex p Amnesty International* (9 December 1998) Lexis, Enggen Library, Cases File, (1998) Times, 11 December, DC.

14 '[P]erhaps in an extreme case the Home Secretary will look to the quality of the evidence but I am satisfied that whether he does so remains a matter for his discretion as opposed to an obligation': *R v Secretary of State for the Home Department, ex p Hagan* (15 December 1993) Lexis, Enggen Library, Cases File, DC, per Russell LJ.

15 *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514 at 531, [1987] 1 All ER 940 at 952, HL, per Lord Bridge (immigration case).

16 *R v Ministry of Defence, ex p Smith* [1996] QB 517 at 554, [1996] 1 All ER 257 at 263, CA, per Sir Thomas Bingham MR. Note the finding of the European Court of Human Rights in *Smith and Grady v United Kingdom* [1999] IRLR 734, ECtHR, that the stringency of this test meant that the applicant had no effective remedy: see PARA 1269 post.

17 *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL; *R v Secretary of State for the Home Department, ex p Osman* (30 July 1992) Lexis, Enggen Library, Cases File, [1993] Crim LR 214, DC, in which the court emphasised that the requirement for most anxious scrutiny does not shift the onus to the Secretary of State to justify his position. 'While the court is required to scrutinise the Home Secretary's decision with care and should not hesitate to intervene if it appears that an applicant has been prejudiced by the Home Secretary not properly performing his duties, the court must also bear in mind that decisions as to extradition can be highly politically charged. When they are the Home Secretary is in an advantageous position for determining whether in all the circumstances it would be unjust or oppressive to order an applicant's return': *R v Secretary of State for the Home Department, ex p Osman* supra.

18 *R v Secretary of State for the Home Department, ex p Johnson* [1999] QB 1174 at 1185, [1998] 4 All ER 635 at 643-644, DC, per Bell J.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(3) CASE STATED/1251. Scope of the appeal.

(3) CASE STATED

1251. Scope of the appeal.

Under the normal powers of the magistrates' court¹, the decision of a magistrate² to commit cannot be the subject of an appeal by way of case stated for the opinion of the High Court³. However, in extradition proceedings under Part III of the Extradition Act 1989⁴, if the magistrate refuses to make an order to commit⁵ the person whose return is sought, the requesting state may question the decision on the ground that it is wrong in law⁶ and may apply to the magistrates' court to state a case for the opinion of the High Court⁷. The procedure for applications by way of case stated is governed by statute⁸ and rules of the court⁹. This procedure does not apply to Schedule 1 cases¹⁰; accordingly, there is no scope for an appeal by way of case stated in such cases.

1 See the Magistrates' Courts Act 1980 s 111; and MAGISTRATES vol 29(2) (Reissue) PARAS 885-887.

2 As to the role of the magistrate see PARA 1115 ante.

3 *Atkinson v United States Government* [1971] AC 197, [1969] 3 All ER 1317, HL. As to appeals by way of case stated generally see CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1691.

4 Ie the Extradition Act 1989 Pt III (ss 7-17) (as amended).

5 Ie an order to commit under ibid s 9 (as amended): see PARAS 1189-1191 ante.

6 See PARA 1252 post.

7 See the Extradition Act 1989 s 10(1); and PARA 1190 ante.

8 See ibid s 10 (as amended); and PARAS 1190-1191 ante, 1253-1254 post.

9 See CPR Sch 1 RSC Ord 56 rr 5, 6, 12A; and CIVIL PROCEDURE. As to the CPR see PARA 1217 note 2 ante. See also the Magistrates' Court (Extradition) Rules 1989, SI 1989/1597; and PARA 1253 post.

10 For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(3) CASE STATED/1252. Wrong in law.

1252. Wrong in law.

The basis for any appeal by way of case stated is that the magistrate's¹ refusal to commit was 'wrong in law'². This is distinct from an error of fact, although a gross error of fact may amount to an error of law where a finding of fact is based on no evidence or where the finding of fact is perverse in that no reasonable magistrate could have reached that conclusion³.

1 As to the role of the magistrate see PARA 1115 ante.

2 See the Extradition Act 1989 s 10(1); and PARA 1190 ante.

3 As to the distinction between law and fact see **JUDICIAL REVIEW** vol 61 (2010) PARA 613.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(3) CASE STATED/1253. Procedure.

1253. Procedure.

Unless the magistrates' court allows a longer period¹, an application for that court to state a case² must be made within the period of 21 days following the day on which the court refuses to make an order of committal³. The application must be made in writing and identify the question or questions on which the opinion of the High Court is sought⁴. Within 21 days after the receipt of that application, the clerk of the court of committal must send a draft case to the solicitor for the requesting state, country or colony and to the person whose surrender is sought or his solicitor⁵. Each party has 21 days within which to make representations⁶. Within 21 days after the latest day on which such representations may be made, the court of committal must, after considering any such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case, which the clerk must send to the solicitor for the state, country or colony⁷.

If the court of committal fails to comply with an application to state a case within these time limits, the requesting state, country or colony may apply to the High Court for an order requiring the magistrates' court to state a case⁸.

Once the magistrates' court has stated the case, the requesting state, colony or country must lodge the case at the Crown Office within 10 days after receiving the case⁹. Within four days after lodging the case, the requesting state must serve on the individual a notice of the entry of the appeal and a copy of the case¹⁰. Unless the Divisional Court otherwise directs, the appeal must not be heard sooner than eight clear days after service on the individual of notice of the entry of the appeal¹¹.

Since the appeal is in a criminal cause or matter¹², the appeal will be heard and determined by the Divisional Court of the High Court¹³. On the appeal, the High Court may either remit the case to the court of committal for the case to be decided according to the High Court's opinion on the question of law¹⁴ or it may dismiss the appeal¹⁵. If the High Court dismisses an appeal relating to an offence it must by order declare that that offence is not one in respect of which the Secretary of State¹⁶ has power to make an order for return in respect of the person whose return was requested¹⁷.

Appeal against the decision of the Divisional Court lies to the House of Lords¹⁸. However, whilst leave is necessary, there is no requirement for a certificate that a point of law of general public importance is involved¹⁹.

¹ There is no equivalent power to extend time in non-extradition cases: see the Magistrates' Courts Act 1980 s 111(2); *Michael v Gowland* [1977] 2 All ER 328, [1977] 1 WLR 296; and MAGISTRATES vol 29(2) (Reissue) PARA 888. As to the role of the magistrate see PARA 1115 ante.

² See under the Extradition Act 1989 s 10(1): see PARA 1190 ante.

³ See the Extradition Act 1989 s 10(3); and the Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 4(2).

⁴ Ibid r 4(3).

⁵ Ibid r 4(4). This is in contrast to the procedure in non-extradition cases in which there is no requirement for the draft case to be sent to the respondent: see Practice Note [1953] 1 WLR 334, DC. Note that the provision in the text applies also to the Hong Kong Special Administrative Region: see the Extradition Act 1989 s 10(14) (as added); and PARA 1254 post.

⁶ Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597, r 4(4).

7 Ibid r 4(4). There is no provision in these rules for the extension of these time limits. However, the Magistrates' Courts Rules 1981, SI 1981/552 (as amended) are to have effect subject to Magistrates' Courts (Extradition) Rules 1989, SI 1989/1597: r 3. As to the power to extend time limits see the Magistrates' Courts Rules 1981, SI 1981/552, r 79; and MAGISTRATES vol 29(2) (Reissue) PARAS 888. *Quaere* whether this rule would apply in extradition proceedings.

8 Extradition Act 1989 s 10(4). There is no power for the magistrates' court to refuse to state a case under these circumstances; cf the Magistrates' Courts Act 1980 s 111(5) (power to refuse to state a case where the justices are of the opinion that the application is frivolous). See MAGISTRATES vol 29(2) (Reissue) PARA 887.

9 See CPR Sch 1 RSC Ord 56 r 6(1)(a); and CIVIL PROCEDURE. As to the CPR see PARA 1217 note 2 ante.

10 See CPR Sch 1 RSC Ord 56 r 6(1)(b); and CIVIL PROCEDURE. As to the power of the court to extend time limits see CPR 3.1(2)(a).

11 See CPR Sch 1 RSC Ord 56 r 6(2); and CIVIL PROCEDURE.

12 See *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346, Times, 24 July, CA (jurisdiction of the Civil Division of the Court of Appeal); *Amand v Home Secretary* [1943] AC 147 at 162, [1942] 2 All ER 381 at 388, HL, per Lord Wright; and PARA 1226 ante.

13 See CPR Sch 1 RSC Ord 56 r 5(1)(a); and CIVIL PROCEDURE.

14 Extradition Act 1989 s 10(5)(a). The House of Lords may exercise any of the powers of the High Court under s 10(5): s 10(10).

15 Ibid s 10(5)(b); and see note 17 infra.

16 As to the Secretary of State see PARA 1116 ante.

17 Extradition Act 1989 s 10(6). This provision applies to the House of Lords as it applies to the High Court: s 10(10).

18 See the Administration of Justice Act 1960 s 1(1) (as amended); and JUDICIAL REVIEW vol 61 (2010) PARA 679. As to appeal to the House of Lords see PARA 1259 et seq post.

19 See ibid s 1(2) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 276); and the Extradition Act 1989 s 10(9).

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(3) CASE STATED/1254. Treatment during the appeal of the person whose return is sought.

1254. Treatment during the appeal of the person whose return is sought.

If the state, country or colony seeking return immediately informs the magistrates' court¹ dealing with the committal that it intends to make an application to the court to state a case, then the court must make an order either that the individual be detained or that he should not be released except on bail².

That order³ ceases to have effect if the High Court dismisses the appeal in respect of the offence⁴ to which it relates⁵ and the foreign state, Commonwealth country or colony does not immediately either apply for leave to appeal from the House of Lords⁶ or inform the court that it intends to apply for such leave⁷. Otherwise, that order will continue so long as the case is pending⁸. A case is pending (unless proceedings are discontinued) until, disregarding any power of a court to grant leave to take any step out of time, there is no step that the requesting state, country or colony can take⁹.

1 As to the role of the magistrate see PARA 1115 ante.

2 See the Extradition Act 1989 s 10(2); and PARA 1191 ante. Section 10 (as amended) applies to the Hong Kong Special Administrative Region in the same way as it applies to any foreign state, Commonwealth country or colony: s 10(14) (added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 1). As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante. For the meaning of 'foreign state' see PARA 1102 note 1 ante; and for the meaning of 'colony' see PARA 1106 note 6 ante. As to Commonwealth countries and colonies see PARAS 1166 ante, 1270 et seq post.

3 Ie an order made by a metropolitan magistrate under the Extradition Act 1989 s 10(2): see s 10(7). As from a day to be appointed, the reference to 'metropolitan magistrate' in s 10(7) is to be replaced with a reference to 'District Judge (Magistrates' Courts)': see s 10(7) (prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 31, 34). At the date at which this volume states the law no such day had been appointed. As to the role of the magistrate see PARA 1115 ante.

4 Or, where the appeal relates to more than one offence, all of the offences.

5 Extradition Act 1989 s 10(7)(a).

6 Ibid s 10(7)(b)(i).

7 Ibid s 10(7)(b)(ii).

8 Ibid s 10(11).

9 Ibid s 10(12).

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1254 Treatment during the appeal of the person whose return is sought

TEXT AND NOTE 6--In Extradition Act 1989 s 10 for 'House of Lords' read 'Supreme Court':
Constitutional Reform Act 2005 Sch 9 para 52 (in force on 1 October 2009: SI
2009/1604).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(4) OVERLAPPING REMEDIES/1255. Judicial review and habeas corpus.

(4) OVERLAPPING REMEDIES

1255. Judicial review and habeas corpus.

It has been said that habeas corpus will issue where the person whose return is sought is detained without any authority, or the purported authority is beyond the powers of the magistrate¹ or Secretary of State² and so is unlawful; whereas judicial review will lie where the decision is within the powers of the magistrate or Secretary of State but where it should never have been taken, because of procedural defect, consideration of irrelevant matters or perversity³. The greatest scope for overlap is where it is alleged that the decision is unlawful because it was based on no evidence or was an unreasonable decision on the available evidence⁴.

If an application is made for habeas corpus and the court determines that judicial review should have been sought, the application will not simply be rejected. The court will recognise the true nature of the application and deal with it accordingly⁵.

The principal differences⁶ between the remedies are in particular that relief in judicial review proceedings is discretionary whereas habeas corpus is granted *ex debito justitiae*; habeas corpus is available provided that the individual remains in custody⁷ whereas judicial review will not lie where there has been undue delay following the decision which is subject to challenge. The burden of proof in habeas corpus cases is upon the respondent, whereas in judicial review cases it is on the applicant⁸.

1 As to the role of the magistrate see PARA 1115 ante.

2 As to the Secretary of State see PARA 1116 ante.

3 *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 322-323, [1991] 1 WLR 890 at 894, CA, per Lord Donaldson MR (immigration case). *Quaere* whether the distinction between errors within authority and those without authority can be sustained.

4 Where the power to detain is dependent on the existence of a precedent fact which is challenged, the detention may be questioned in habeas corpus proceedings even if other remedies are available: see *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL (immigration case). See also *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244, [1991] 4 All ER 72 (immigration case).

5 *Re John (Julie)* [1998] COD 306. 'The distinction between these two forms of relief [habeas corpus and judicial review] is not unimportant, since the applicant can petition the House of Lords for leave to appeal if this court refuses an application for habeas corpus, whereas in the ordinary case of an application for judicial review in a criminal matter it is necessary for this court to certify a point of law of general public importance before the applicant can approach the House of Lords': *Re Agkurt* (7 July 1998) Lexis, Enggen Libraery, Cases File, DC, per Lord Bingham CJ (application regarded as one of judicial review despite the applicant mislabelling it).

6 In a non-extradition case, the Divisional Court has emphasised the limited practical implications of these differences: see *R v Oldham Justices, ex p Cawley* [1997] QB 1 at 18-19, [1996] 1 All ER 464 at 478, DC, per Simon Brown LJ. However, see *O v Governor of Brixton Prison* (1999) Times, 2 August, DC, where it was held that where the basis for committal in extradition proceedings is successfully challenged on an application for habeas corpus, the High Court may remit the matter to the magistrate to consider whether committal could have been justified on an alternative basis, which the magistrate had expressly declined to consider as being unnecessary.

7 In the context of habeas corpus proceedings, an applicant on bail is to be treated as if in custody: *Re Amand* [1941] 2 KB 239 at 249, DC, per Viscount Caldecote CJ; *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994 at 1000-1001, [1998] 3 WLR 221 at 225-226, DC, per Simon Brown LJ.

8 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. See also *Liversidge v Anderson* [1942] AC 206, HL; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(4) OVERLAPPING REMEDIES/1256. Judicial review and case stated.

1256. Judicial review and case stated.

In Part III cases¹ only, a requesting state may appeal by way of case stated against a refusal by the magistrate² to commit the individual³. The basis for such an appeal is that the refusal to commit was 'wrong in law'⁴. Where the alleged error of law is that the decision was based on no evidence or that it was perverse, either judicial review or appeal by way of case stated may be used by the requesting state, but the latter is preferable since the magistrate is required to set out in the case the evidence alleged to support the findings⁵.

1 For the meaning of 'Part III cases' see PARA 1105 ante.

2 As to the role of the magistrate see PARA 1115 ante.

3 See the Extradition Act 1989 s 10(1); and PARAS 1190, 1251 ante.

4 See *ibid* s 10(1); and PARAS 1190, 1251 ante.

5 See *Stubbings v Beaconsfield Justices* (1988) 54 P & CR 327, 152 JP 17, CA.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(5) STATUTORY DISCHARGE/1257. Statutory discharge under Part III of the Extradition Act 1989.

(5) STATUTORY DISCHARGE

1257. Statutory discharge under Part III of the Extradition Act 1989.

If a person committed by the magistrate¹ is still in the United Kingdom² after the expiration of the relevant period, he may apply to the High Court for his discharge³. Unless he has instituted proceedings for judicial review of the Secretary of State's⁴ decision to order his return, the relevant period is⁵:

- 87 (1) the period of two months beginning with the first day on which he could have been returned⁶;
- 88 (2) where a warrant for his return has been issued⁷, the period of one month beginning with the day on which that warrant was issued⁸.

If he has instituted proceedings for judicial review⁹, the relevant period is the period expiring one month after the proceedings end¹⁰. If, upon an application for discharge, the court is satisfied that reasonable notice of the proposed application has been given to the Secretary of State, the court may¹¹, unless sufficient cause is shown to the contrary¹², by order direct the applicant to be discharged and, if a warrant for his return has been issued¹³, quash that warrant¹⁴.

An application for discharge is not an application for a writ of habeas corpus¹⁵ and so, before permission to appeal to the House of Lords from a decision of the High Court can be granted, a certificate of a point of law of general public importance must be given by the High Court¹⁶.

1 He under the Extradition Act 1989 s 9 (as amended): see PARAS 1189-1190 ante. As to the role of the magistrate see PARA 1115 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 Extradition Act 1989 s 16(1).

4 As to the Secretary of State see PARA 1116 ante.

5 Extradition Act 1989 s 16(2).

6 Ibid s 16(2)(a). To calculate the first day, regard must be had to s 11(2) (see PARA 1183 ante): s 16(2)(a).

7 He under ibid s 12 (as amended): see PARA 1193 ante.

8 Ibid s 16(2)(b).

9 'Judicial review proceedings are instituted when a notice for an application for leave to apply for judicial review is made ... Section 16 requires the relevant period to be looked at at the moment of application to the court. At the moment of application to the court, namely in February 1996, [the applicants] had instituted proceedings for judicial review. Therefore the subsection (3) regime was in force and the relevant period had not expired because those proceedings had not ended. The application made under section 16(1) is premature because it was made before the expiration of the relevant period in the circumstances': *R v Secretary of State for the Home Department, ex p Chetta* (6 June 1996) Lexis, Enggen Library, Cases File, (1996) Times, 11 July, DC, per Henry LJ.

10 Extradition Act 1989 s 16(3). For the purposes of s 16, proceedings for judicial review end (1) if they are discontinued, on the day of discontinuance (s 16(4)(a)); and (2) if they are determined, on the day on which

(disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of appeal (s 16(4)(b)).

11 The word 'may' should be interpreted as mandatory, in the absence of sufficient cause being shown to the contrary: *Re Shuter (No 2)* [1960] 1 QB 142, [1959] 3 All ER 481; *R v Governor of Brixton Prison, ex p Enahoro* [1963] 2 QB 455, [1963] 2 All ER 477 (both cases under the Fugitive Offenders Act 1881 s 7 (repealed)); *Re Oskar* (29 February 1988) Lexis, Enggen Library, Cases File, (1988) Independent, 10 March, DC (a case under the Fugitive Offenders Act 1967 s 10).

12 It is for the Secretary of State to account for any delay in surrender, but matters of reasonableness in all the circumstances may be taken into account when deciding whether sufficient cause has been shown: *Re Shuter (No 2)* [1960] 1 QB 142, [1959] 3 All ER 481; *R v Governor of Brixton Prison, ex p Enahoro* [1963] 2 QB 455, [1963] 2 All ER 477; *Re Oskar* (29 February 1988) Lexis, Enggen Library, Cases File, (1988) Independent, 10 March, DC. The relevant conduct to be considered is that of the Home Office, not that of the requesting state: *Re Oskar* supra.

13 Ie under the Extradition Act 1989 s 12 (as amended): see PARA 1193 ante. .

14 Ibid s 16(5).

15 As to habeas corpus see PARA 1217 et seq ante.

16 See *R v Governor of Brixton Prison, ex p Enahoro* [1963] 2 QB 455, [1963] 2 All ER 477; *Re Chetta* (30 April 1997, unreported). Cf *Re Oskar* (29 February 1988) Lexis, Enggen Library, Cases File, (1988) Independent, 10 March, DC, where it was assumed without argument that no certificate was required. As to appeals from the High Court see PARA 1259 et seq post.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/5. APPLICATIONS TO THE HIGH COURT/(5) STATUTORY DISCHARGE/1258. Statutory discharge under Schedule 1 to the Extradition Act 1989.

1258. Statutory discharge under Schedule 1 to the Extradition Act 1989.

If the fugitive criminal who has been committed to prison¹ is not surrendered and conveyed out of the United Kingdom² within two months after such committal, or, if a writ of habeas corpus³ is issued, after the decision of the court upon the return to the writ, it is lawful for any judge of the High Court, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such an application has been given to the Secretary of State⁴, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary⁵.

1 le under the Extradition Act 1989 s 1(3), Sch 1 para 7 (prospectively amended): see PARA 1213 ante.

2 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

3 As to habeas corpus see PARA 1217 et seq ante.

4 As to the Secretary of State see PARA 1116 ante.

5 Extradition Act 1989 Sch 1 para 10. Discharge is mandatory, unless sufficient cause is shown to the contrary: *Re Levin* (28 August 1997, unreported); *R v West London Magistrates' Court, ex p Allison* (24 July 1998) Lexis, Enggen Library, Cases File. Sufficient cause was shown in *Re Levin* supra (non-surrender due to Home Secretary giving applicant full opportunity to make representations against his return); and *Re Allison* supra (non-surrender due to legal proceedings, ie appeal to the House of Lords by the United States government against refusal to commit on certain charges). See also the comments of Rose LJ in *Re Akbar* (29 October 1996, unreported) (sufficient cause not shown). See also the cases cited in PARA 1257 notes 11-16 ante.

UPDATE

1217-1258 Applications to the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1259. Introduction.

6.

(1) APPEALS TO THE HOUSE OF LORDS

1259. Introduction.

Proceedings in extradition cases are proceedings in a criminal cause or matter¹. There is no appeal from the High Court to the Court of Appeal² but only to the House of Lords³.

¹ *Amand v Home Secretary* [1943] AC 147, HL, approving *Ex p Woodhall* (1888) 20 QBD 832, CA; *R v Governor of Brixton Prison, ex p Levin* [1997] AC 741, [1997] 3 All ER 289, HL; *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346 at 1349, CA, per Lord Bingham of Cornhill CJ.

² See the Supreme Court Act 1981 s 18(1)(a); and CIVIL PROCEDURE vol 12 (2009) PARA 1692. See also *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346, CA.

³ Appeals lie to the House of Lords, at the instance of the defendant or the prosecutor from any decision of the High Court in a criminal cause or matter: Administration of Justice Act 1960 s 1(1) (amended by the Access to Justice Act 1999 s 63(1)).

In *Re Poh* [1983] 1 All ER 287, [1983] 1 WLR 2, HL (a civil case), the House of Lords ruled that it had no jurisdiction to consider a petition against a decision of the Court of Appeal on a renewed application for permission to apply for judicial review. This was reflected in the *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals (January 1996)* direction 1.6(b), but this direction was repealed in July 1999. There is no equivalent direction applicable to criminal appeals, and the *House of Lords Practice Directions applicable to Criminal Appeals (May 1997)* direction 1.1(b) states that an appeal lies from any decision of a Divisional Court in a criminal cause or matter. It is therefore arguable that the House of Lords may be petitioned against a refusal by the Divisional Court to grant permission to apply for judicial review.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1259 Introduction

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 3--Administration of Justice Act 1960 s 1(1) further amended: Constitutional Reform Act 2005 Sch 9 para 13(2) (in force on 1 October 2009: SI 2009/1604).

1997 Directions dir 1.1(b) now *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) dir 1.1(e), which provides that an appeal lies from any decision of the High Court of Justice in a criminal cause or matter.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1260. Bail.

1260. Bail.

Where the individual would, but for a decision of the Divisional Court in his favour, be liable to be detained and immediately after that decision the requesting state is granted, or gives notice that it intends to apply for, leave to appeal, the Divisional Court may make an order providing for the individual's detention, or directing that he must not be released except on bail, so long as the appeal to the House of Lords is pending¹. If no such application is made and the individual is discharged by the Divisional Court then he is not liable to be detained again, irrespective of the decision of the House of Lords on the appeal². The House of Lords does not itself deal with issues relating to bail.

1 See the Administration of Justice Act 1960 s 5(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1191. As to bail generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1165 et seq.

2 See *ibid* s 5(5) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1191. See also *United States Government v McCaffery* [1984] 2 All ER 570 at 576, [1984] 1 WLR 867 at 873, HL, per Lord Diplock.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1261. Habeas corpus.

1261. Habeas corpus.

In a habeas corpus case, permission to appeal to the House of Lords is required, either from the High Court¹ or (provided that the High Court has first refused permission) from the House of Lords itself². There is no requirement for a certificate from the High Court that a point of law of general public importance is involved in the decision which should be considered by the House of Lords³.

On an appeal, the House of Lords has the same powers as (and no wider powers than) the Divisional Court⁴.

1 Note that the requirement in the Administration of Justice Act 1960 s 14(1) that only a Divisional Court could refuse an order for the release of a person restrained was repealed by the Access to Justice Act 1999 s 106, Sch 15.

2 See the Administration of Justice Act 1960 s 1(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

3 See *ibid* ss 1(2), 15(3) (as amended); para 1226 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

4 *Schtraks v Government of Israel* [1964] AC 556, [1962] 3 All ER 529, HL (appeal against a decision on a habeas corpus application challenging the magistrate's decision to commit); *Union of India v Narang* [1978] AC 247, [1977] 2 All ER 348, HL (appeal against a decision of the Divisional Court under the Fugitive Offenders Act 1967 s 8(3) (now repealed), the equivalent of which is now the Extradition Act 1989 s 11(3) (see PARA 1183 ante)). As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1531.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1262. Judicial review.

1262. Judicial review.

In a judicial review case, no appeal may be made to the House of Lords unless the Divisional Court has certified that its decision raises a point of law of general public importance and that this point should be considered by the House of Lords¹. If no certificate has been granted, the petition will not be received in the Judicial Office².

Once a certificate has been granted, permission to appeal to the House of Lords must be obtained, either from the Divisional Court or (provided that the Divisional Court has first refused permission³) from the House of Lords itself⁴.

1 See the Administration of Justice Act 1960 s 1(2); and **JUDICIAL REVIEW** vol 61 (2010) PARA 679. The need for such a certificate means that it is important to identify the true nature of an application to the Divisional Court: *Re Agkurt* (7 July 1998, unreported), DC (application was one for judicial review in substance, although it had been put into the form of an application for habeas corpus). As to judicial review in the context of extradition see PARA 1229 et seq ante. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1530.

2 *House of Lords Practice Directions applicable to Criminal Appeals (May 1997)*, direction 4.2.

3 Permission to appeal is nearly always refused by the Divisional Court, the question being left to the House of Lords itself. However, for exceptions see *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening) (No 3)* [1999] 2 All ER 97, [1999] 2 WLR 827, HL.

4 See the Administration of Justice Act 1960 s 1(2); and **JUDICIAL REVIEW** vol 61 (2010) PARA 679.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1262 Judicial review

NOTE 2--1997 Directions dir 4.2 now *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) dir 4.3.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1263. Appeal by way of case stated.

1263. Appeal by way of case stated.

Permission to appeal to the House of Lords against a decision of the Divisional Court on an appeal by way of case stated¹ brought in Part III cases² is required, either from the Divisional Court or (provided that the Divisional Court has first refused permission) from the House of Lords itself³. There is no requirement for a certificate from the Divisional Court that a point of law of general public importance is involved in the decision which should be considered by the House of Lords⁴.

On such an appeal the House of Lords has the same powers as the Divisional Court⁵, namely either to remit the case to the magistrate or to dismiss the appeal⁶.

1 As to case stated in the context of extradition see PARA 1251-1254 ante. As to appeal by way of case stated generally see CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1691.

2 For the meaning of 'Part III cases' see PARA 1105 ante. There is no appeal by way of case stated in Schedule 1 cases. For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

3 See the Administration of Justice Act 1960 s 1(2); and **JUDICIAL REVIEW** vol 61 (2010) PARA 679.

4 See *ibid* s 1(2); the Extradition Act 1989 s 10(9); and PARA 1253 ante.

5 See *ibid* s 10(10); and PARA 1253 ante.

6 See *ibid* s 10(5); and PARA 1253 ante. As to the role of the magistrate see PARA 1115 ante.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(1) APPEALS TO THE HOUSE OF LORDS/1264. Statutory discharge.

1264. Statutory discharge.

Specific provision is made for application to the High Court for discharge in the case of delay.¹ An appeal against that decision lies to the House of Lords². No appeal may be made to the House of Lords unless the High Court has certified that its decision raises a point of law of general public importance and that this point should be considered by the House of Lords³. If no certificate has been granted, the petition will not be received in the Judicial Office⁴. Once a certificate has been granted, permission to appeal to the House of Lords must be obtained, either from the High Court or (provided that the High Court has first refused permission) from the House of Lords itself⁵.

1 See the Extradition Act 1989 s 16 (see PARA 1257 ante) and s 1(3), Sch 1 para 10 (see PARA 1258 ante).

2 See the Administration of Justice Act 1960 s 1(1)(a) (amended by the Access to Justice Act 1999 s 63); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247.

3 See the Administration of Justice Act 1960 s 1(2). This provision is disapplied only in habeas corpus cases (see s 15(3); and PARAS 1226, 1261 ante) and in cases of appeal by way of case stated (see the Extradition Act 1989 s 10(9); and PARAS 1253, 1263 ante). See also CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1691. As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1531. As to case stated in the context of extradition see PARA 1251-1254 ante; and as to appeal by way of case stated generally see CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1691. A certificate was granted in *R v Governor of Brixton Prison, ex p Enahoro* [1963] 2 QB 455, [1963] 2 All ER 477, DC, and was refused (following submissions) in *Re Chetta* (30 April 1997) Lexis, Enggen Library, Cases File, DC. Cf *Re Oskar* (29 February 1988) Lexis, Enggen Library, Cases File, (1988) Independent, 10 March, DC, in which it was assumed without argument that no certificate was required.

4 *House of Lords Practice Directions applicable to Criminal Appeals (May 1997)* direction 4.2.

5 See the Administration of Justice Act 1960 s 1(2); and JUDICIAL REVIEW vol 61 (2010) PARA 679.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1264 Statutory discharge

NOTE 4--1997 Directions dir 4.2 now *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) dir 4.3.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(2) APPLICATIONS TO THE EUROPEAN COURT OF HUMAN RIGHTS/1265. Making an application.

(2) APPLICATIONS TO THE EUROPEAN COURT OF HUMAN RIGHTS

1265. Making an application.

Notwithstanding the commencement of the Human Rights Act 1998,¹ individuals will retain the right to apply to the European Court of Human Rights² alleging breach of the rights conferred by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)³. It is a pre-condition to the making of such an application that the individual has exhausted all domestic remedies⁴. In practice, this means that the High Court has refused a certificate (where that is necessary⁵), the House of Lords has refused permission to appeal or the appeal has been unsuccessful⁶. The application must be made within six months of the final decision⁷.

1 As to the commencement of the Human Rights Act 1998 see PARA 1267 note 1 post. As to human rights in the context of extradition see PARA 1267 et seq post.

2 As to the composition and jurisdiction of the European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 179-181.

3 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) Art 34. As to human rights and freedoms under the Convention see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

4 See *ibid* Art 35(1).

5 *le* in all appeals except that from a decision of a Divisional Court on a criminal application for habeas corpus (see the Administration of Justice Act 1960 ss 1(2), 15(3); and PARAS 1226, 1261 ante) and that from a decision of the High Court on an appeal by way of case stated under the Extradition Act 1989 s 10 (as amended) (see the Administration of Justice Act 1960 s 1(2); the Extradition Act 1989 s 10(9); and PARAS 1253, 1263 ante).

6 See PARA 1259 et seq ante.

7 See the European Convention on Human Rights Art 35(1).

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/6. APPEALS FROM THE HIGH COURT/(2) APPLICATIONS TO THE EUROPEAN COURT OF HUMAN RIGHTS/1266. The effect of an application.

1266. The effect of an application.

Whilst the government is under an obligation not to hinder in any way the effective exercise of the individual's right to petition the European Court of Human Rights¹, the making of an application does not entitle the individual to a stay on his return to the requesting state². The European Court of Human Rights (or in appropriate cases the President) may itself indicate appropriate interim measures³. These requirements are not binding and a failure to observe them does not amount to a breach of the obligation not to hinder an application⁴. However, in practice the government will observe such indications. The individual will remain in custody or on bail awaiting his return in accordance with the order at that time governing his custody or bail.

If the European Court of Human Rights finds that there has been a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), it will issue a reasoned judgment to that effect⁵ and may afford just satisfaction to the individual concerned⁶. As a matter of domestic law, the government is free to ignore the European Court of Human Rights' declaration on the individual case, though following the commencement of the Human Rights Act 1998 a declaration will have much wider implications, both for the individual concerned⁷ and generally⁸.

1 See the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) Art 34.

2 *R v Secretary of State for the Home Department, ex p Kirkwood* [1984] 2 All ER 390, [1984] 1 WLR 913; *Uppal v Home Office* (1978) Times, 21 October (affd (1978) 123 Sol Jo 17, Times, 11 November, CA) (immigration case; the European Convention on Human Rights Art 25 does not require that a deportation order be stayed pending the hearing of an application); *R v Secretary of State for the Home Department, ex p Kaur* [1996] Imm AR 359, (English courts have no jurisdiction to grant an injunction to restrain deportation pending the outcome of a petition to the European Court of Human Rights).

3 Rules of Court (4 November 1998); 27 EHRR 123 Rule 39 (formerly Rule 36).

4 Application 15576/89 *Cruz Varas v Sweden* (1991) 14 EHRR 1, ECt HR (immigration case).

5 See the European Convention on Human Rights Arts 44, 45.

6 If the European Court of Human Rights finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the high contracting party concerned allows only partial reparation to be made, the European Court of Human Rights must, if necessary afford just satisfaction to the injured party: see *ibid* Art 41.

7 If the individual can find a basis for launching further proceedings in the United Kingdom then he may rely upon the decision of European Court of Human Rights, which will have legal effect by virtue of the Human Rights Act 1998 s 2. As to the commencement of the Human Rights Act 1998 see PARA 1267 post.

8 See PARA 1268 post.

UPDATE

1259-1266 Appeals from the High Court

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/7. HUMAN RIGHTS/1267. In general.

7.

1267. In general.

Until the Human Rights Act 1998 comes into force¹, the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (commonly called the 'European Convention on Human Rights')² does not have the force of law in England and Wales³. Whilst there is a presumption in construing legislation that Parliament intended to legislate in conformity with the Convention⁴, the extradition legislation cannot in any way be undermined or qualified by it⁵.

The Secretary of State is not under an obligation to take the Convention itself into account when exercising his discretion⁶. However, if he specifically relies upon a particular interpretation of the Convention, then the court may consider whether that interpretation was correct⁷.

1 As to the commencement of the Human Rights Act 1998 see PARA 1268 post.

2 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq. The Convention is set out in the Human Rights Act 1988 s 1(3), Sch 1. At the date at which this volume states the law, no order had been made bringing Sch 1 into force: see note 1 supra. As to the treatment of international human rights law in United Kingdom courts see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 104.

3 *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418 at 500, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523 at 544-545, HL, per Lord Oliver of Aylmerton (the effect of treaties in English law), applied with reference to the European Convention on Human Rights in *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 762, sub nom *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720 at 735, HL, per Lord Ackner. 'It would be strange if in the interim period between the enactment of the 1998 Act and the coming into force of its central provisions defendants in criminal trials were entitled to an additional remedy by way of judicial review. ... [T]he entertaining of such challenges outside the trial and appeal process might seriously disrupt the criminal justice system. Moreover, when Article 6 of the Convention becomes part of our law, it will be the prism through which other aspects of our criminal law may have to be re-examined. If the Divisional Court's present ruling is correct, it will be possible in other cases ... to challenge decisions to prosecute in judicial review proceedings. The potential for undermining the proper and fair management of our criminal justice system may be considerable': *R v DPP, ex p Kebilene* [1999] 4 All ER 801 at 834, [1999] 3 WLR 972 at 984, HL, per Lord Steyn (revsg [1999] 4 All ER 801, [1999] 3 WLR 175, DC).

4 *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 747-748, sub nom *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720 at 722-723, HL, per Lord Bridge of Harwich.

5 *Re Agkurt* (7 July 1998) Lexis, Enggen Library, Cases File, DC; *R v Secretary of State for the Home Department, ex p Chinoy* (10 April 1991) Lexis, Enggen Library, Cases File, ((1999) Times, 16 April, DC. 'I find it quite impossible to conclude that the Secretary of State would be entitled under article V(2) [of the US/UK Extradition Treaty] to refuse extradition on the ground that the European Convention provided such a ground ...': *R v Secretary of State for the Home Department, ex p Chinoy* supra per Bingham LJ.

6 *R v Secretary of State for the Home Department, ex p Kirkwood* [1984] 2 All ER 390, [1984] 1 WLR 913. To hold that he was under such an obligation would lead to incorporation of the Convention by the back door: *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 761-762, sub nom *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720 at 734-735, HL, per Lord Ackner.

The Divisional Court (on an application to set aside the grant of permission) considered that it was arguable whether the Secretary of State was under a duty to consider the fact of an application by the applicant to the European Commission on Human Rights in deciding whether to issue an order for return under the Extradition Act 1989 s 12 (as amended) (see PARA 1193 ante): *R v Secretary of State for the Home Department, ex p Shah*

(9 April 1990) Lexis, Enggen Library, Cases File, DC. As to the abolition of the European Commission on Human Rights and the establishment of a new single permanent European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 122, 172 et seq.

In cases where Convention rights are not strictly speaking applicable, the protection afforded by the common law may well coincide with Convention rights: see eg *R v Secretary of State for the Home Department, ex p Sinclair* [1992] Imm AR 293, 4 Admin LR 613, DC, where Watkins LJ found the principle underlying the European Convention on Human Rights Art 8 to be 'very much to the point' (extradition order quashed on the ground that it would be unjust and oppressive to extradite the applicant in the circumstances).

As to a regulation deemed unlawful because it offended against basic human rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 232.

If representations (with or without reference to the European Convention on Human Rights) are made to the Secretary of State about the treatment which the individual might face if returned to the requesting state, then the Secretary of State must take account of those representations: *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961 at 977, [1997] 1 WLR 839 at 855, HL, per Lord Hope of Craighead.

7 *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL; *R v Secretary of State for the Home Department, ex p Watson* (2 April 1996) Lexis, Enggen Library, Cases File.

UPDATE

1267-1269 Human Rights

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/7. HUMAN RIGHTS/1268. The Human Rights Act 1998.

1268. The Human Rights Act 1998.

Once the Human Rights Act 1998 has been brought fully into force¹, the courts will be under an obligation, so far as it is possible, to read and give effect to primary and subordinate legislation in a way which is compatible with Convention rights². If the court is satisfied that a provision of primary legislation is incompatible with a Convention right then it may make a declaration of that incompatibility³. Furthermore, it will be unlawful for a public authority⁴ to act in a way which is incompatible with a Convention right⁵. In practice, this will mean that the magistrate and the High Court will be under a duty to construe the Extradition Act 1989 in a way which is compatible with the defined Convention rights, so far as that is possible. The magistrate and the Secretary of State will be under an obligation to ensure that they act in accordance with the defined Convention rights.

A victim of any such unlawful act may either bring proceedings against the authority under the Human Rights Act 1998, or rely on the Convention right or rights concerned in any legal proceedings⁶ (the more likely route in extradition cases being challenge by way of an application for judicial review or for habeas corpus)⁷. If the court finds that the act is unlawful, then it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate⁸. This may include an injunction against the Secretary of State to prevent a breach of a Convention right. If no remedy is forthcoming in the English courts it remains open to an applicant to apply directly to the European Court of Human Rights⁹, provided that he has exhausted his domestic remedies.

1 The provisions of the Human Rights Act 1998 (other than ss 18, 20, 21(5), 22, which came into force on 9 November 1998) come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes: s 22(2)-(3). At the date at which this volume states the law the Human Rights Act 1998 (Commencement) Order 1998, SI 1998/2882 (bringing the Human Rights Act 1998 s 19 into force on 24 November 1998) had been made. At the date at which this volume states the law, none of the provisions set out in this paragraph is in force. As to the Secretary of State see PARA 1116 ante.

2 See the Human Rights Act 1998 s 3(1). 'Convention rights' means the rights and fundamental freedoms specified in s 1(1): see s 1(1). As to human rights and freedoms under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) see PARA 1269 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

3 See the Human Rights Act 1998 s 4(1), (2).

4 'Public authority' includes a court or tribunal, and any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament: *ibid* s 6(3).

5 See *ibid* s 6(1).

6 See *ibid* s 7(1).

7 As to applications for judicial review see PARAS 1229-1258 ante; and as to applications for habeas corpus see PARAS 1217-1228 ante.

8 See the Human Rights Act 1998 s 8(1). As to an award of damages see s 8(2)-(4).

9 As to the composition and jurisdiction of the European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 179-181.

UPDATE

1267-1269 Human Rights

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1268 The Human Rights Act 1998

NOTE 1--Human Rights Act 1998, so far as not already in force, now in force: SI 2000/1851.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/7. HUMAN RIGHTS/1269. Rights under the European Convention on Human Rights.

1269. Rights under the European Convention on Human Rights.

Deprivation of the liberty of a person against whom action is being taken with a view to extradition is in principle compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) ('European Convention on Human Rights')¹. The European Court of Human Rights² has ruled that a contracting state cannot surrender someone to another state where there are substantial grounds for believing that there is a danger of a breach of the provision relating to prohibition of torture and inhuman or degrading treatment or punishment³; prolonged detention on death row could amount to such a breach⁴. The question whether the responsibility of the returning state may be engaged under the provision relating to the right to a fair trial⁵, where the individual risked the flagrant denial of a fair trial if he was returned to the requesting state, has been left open⁶.

The stringent requirements of the perversity test applied by the courts in exercising their supervisory jurisdiction have been called into question by the court, but this was in the context of a blanket policy; the assessment of an individual extradition in the context of prohibition of torture⁷ was specifically distinguished⁸.

1 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) Art 5 para 1(f). As to the European Convention on Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq. Proceedings must be conducted by the extraditing state with 'due diligence': Application 22414/93 *Chahal v United Kingdom* (1996) 23 EHRR 413 at 465, ECtHR; Application 18580/91 *Quinn v France* (1995) 21 EHRR 529, ECtHR.

2 As to the composition and jurisdiction of the European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 179-181.

3 I.e. the European Convention on Human Rights Art 3.

4 Application 14038/88 *Soering v United Kingdom* (1989) 11 EHRR 439 at 478, ECtHR. '... having regard to the very long period of time spent on death row in such extreme conditions, with the ever-present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States [Virginia] would expose him to a real risk of treatment going beyond the threshold set by Article 3': *Soering v United Kingdom* supra at 478. See also Application 5961/72 *Amekrane v United Kingdom* (1972) 44 CD 101, EComHR; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124.

Prior to the Human Rights Act 1998, such treatment was one consideration which had to be taken into account by the Secretary of State if raised in an appropriate manner: *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961 at 977, [1997] 1 WLR 839 at 855, HL, per Lord Hope of Craighead. 'If issues of that kind are raised in a responsible manner, by reference to evidence and supported by reasoned argument, he must consider them. The greater the perceived risk to life and liberty, the more important it will be to give them detailed and careful scrutiny': *R v Secretary of State for the Home Department, ex p Launder* supra at 977 and 855 per Lord Hope of Craighead. However, under the Human Rights Act 1998, the prospect of such treatment may be elevated as a paramount consideration for the Secretary of State: see Application 22414/93 *Chahal v United Kingdom* (1996) 23 EHRR 413 at 457, ECtHR. 'Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him against such treatment is engaged in the event of expulsion': *Chahal v United Kingdom* supra at 457.

See also the case of Application 30240/96 *D v United Kingdom* (1997) 24 EHRR 423, ECtHR (deportation), in which the court ruled that, whilst the conditions in the receiving country were not themselves in breach of the European Convention on Human Rights Art 3, the lack of treatment available there for the applicant (who was dying) would lead to such discomfort as to be inhuman treatment.

5 I.e. the European Convention on Human Rights Art 6.

6 Application 14038/88 *Soering v United Kingdom* (1989) 11 EHRR 439 at 479, ECtHR. 'The court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country. However, the facts of the present case do not disclose such a risk': *Soering v United Kingdom* supra at 479. As to the abolition of the European Commission on Human Rights and the establishment of a new single permanent European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 122, 172 et seq.

7 le the European Convention on Human Rights Art 3.

8 *Smith and Grady v United Kingdom* [1999] IRLR 734, ECtHR (referring to Application 14038/88 *Soering v United Kingdom* (1989) 11 EHRR 439, ECtHR), where the challenge was based on the European Convention on Human Rights Art 13 (right to an effective remedy).

UPDATE

1267-1269 Human Rights

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1269 Rights under the European Convention on Human Rights

NOTE 3--A whole-life sentence without the possibility of parole will not necessarily amount to an inhuman or degrading punishment: *R (on the application of Wellington) v Secretary of State for the Home Department* [2008] UKHL 72, [2009] 2 All ER 436. See also *R (on the application of Bary) v Secretary of State for the Home Department* [2009] EWHC 2068 (Admin), [2009] All ER (D) 59 (Aug). The prospect of a long term of imprisonment which is likely to cause detriment to an extraditee's mental health does not amount to inhuman or degrading treatment or punishment: *R (on the application of McKinnon) v Secretary of State for Home Affairs* [2009] EWHC 2021 (Admin), [2009] All ER (D) 01 (Aug), DC.

NOTE 4--The appropriate time to consider whether extradition proceedings involving the accused's exposure to the risk of the death penalty offend the Convention is when the Secretary of State decides to extradite: *Re St John* [2001] All ER (D) 151 (Jul), DC.

NOTES 5, 6--The test by which availability of a fair trial has to be judged is whether there is a real risk of flagrant denial of justice that would be suffered by an extraditee if he were extradited: *Brown v Government of Rwanda* [2009] EWHC 770 (Admin), [2009] All ER (D) 98 (Apr), DC (extradition to Rwanda would mean real risk of denial of justice).

NOTE 6--Where a proposed extradition is properly constituted according to the domestic law of the sending state and the relevant bilateral treaty, and its execution is resisted on human rights grounds, a wholly exceptional case must be shown to justify a finding that the extradition would on the particular facts be disproportionate to its legitimate aim: *R (on the application of Bermingham) v Director of the Serious Fraud Office; Bermingham v Government of the United States of America* [2006] EWHC 200 (Admin), [2006] 3 All ER 239, DC.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/8. UNITED KINGDOM COLONIES/(1) PART III ARRANGEMENTS/1270. Part III procedures.

8.

(1) PART III ARRANGEMENTS

1270. Part III procedures.

Subject to the provisions of the Extradition Act 1989, a person in the United Kingdom¹ who is accused² of an extradition crime³ in a colony⁴ or who is alleged to be unlawfully at large after conviction of such an offence in any such colony, may be arrested and returned to that colony in accordance with extradition procedures under the provisions of Part III of the Extradition Act 1989⁵.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 As to 'accused' see the Extradition Act 1989 s 35(2); and PARA 1166 ante.

3 For the meaning of 'extradition crime' for these purposes see PARAS 1172-1173 ante.

4 For the meaning of 'colony' see PARA 1106 note 6 ante.

5 Extradition Act 1989 s 1(2); and see PARA 1166 ante. The provisions referred to are those of Pt III (ss 7-17) (as amended).

UPDATE

1270-1274 United Kingdom Colonies

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/8. UNITED KINGDOM COLONIES/(1) PART III ARRANGEMENTS/1271. Extradition between colonies and the United Kingdom, Commonwealth countries, the Republic of Ireland and other colonies.

1271. Extradition between colonies and the United Kingdom, Commonwealth countries, the Republic of Ireland and other colonies.

Her Majesty may by Order in Council make provision for extending all or any of the provisions of the Extradition Act 1989 relating to return to Commonwealth countries¹ (other than this provision) to any colony², with the substitution of a reference to that colony for any reference to the United Kingdom³, and with such other exceptions, adaptations or modifications as may be specified in the Order⁴. Such an Order in Council may⁵: (1) so far as it extends to any colony provisions of the Extradition Act 1989 relating to the return of persons to and the treatment of persons returned from designated Commonwealth countries⁶, apply those provisions in relation to the Republic of Ireland⁷ as they apply in relation to a designated Commonwealth country⁸; and (2) so far as it extends to any colony provisions of the Extradition Act 1989 relating to the return of persons to and the treatment of persons returned from colonies, apply those provisions in relation to the United Kingdom as they apply in relation to a colony⁹. Any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament¹⁰. The repeal by the Extradition Act 1989 of the Fugitive Offenders Act 1967 does not affect certain Orders in Council made under that Act¹¹ or the power to revoke or amend such an Order¹². By Order in Council Her Majesty could extend all or any of the provisions of the Fugitive Offenders Act 1967 to any colony or to any country outside Her Majesty's dominions in which she had any jurisdiction, subject to any modifications, adaptations or exceptions contained in the Order¹³. Such Orders in Council have been made under the Fugitive Offenders Act 1967 in relation to Anguilla¹⁴, Bermuda¹⁵, British Indian Ocean Territory¹⁶, Cayman Islands¹⁷, Falkland Islands and Dependencies¹⁸, Gibraltar¹⁹, Montserrat²⁰, Pitcairn, Henderson, Ducie and Oeno Islands²¹, St Helena²², Sovereign Base Areas of Akrotiri and Dhekelia²³, Turks and Caicos Islands²⁴ and the Virgin Islands²⁵. Orders in Council have been made²⁶ which deem further offences to be included among the descriptions of offences set out²⁷ in the Fugitive Offenders Act 1967²⁸.

Her Majesty may by Order in Council²⁹ make, for any colony, such special provision as appears to be appropriate as between that colony and any other country being either a designated Commonwealth country or a colony³⁰: (a) for authorising and regulating the return to that other country of persons accused or convicted in it of offences³¹; (b) for regulating the treatment in the colony for which the Order makes provision of persons returned to it from that other country pursuant to the Extradition Act 1989 or any Order in Council under it or any corresponding law of that other country³².

Her Majesty may by Order in Council direct that any provision to which this provision applies³³ is to have effect in any colony³⁴.

1 As to Commonwealth countries see PARA 1106 ante; and COMMONWEALTH vol 13 (2009) PARA 709.

2 For the meaning of 'colony' see PARA 1106 note 6 ante.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 Extradition Act 1989 s 32(1). At the date at which this volume states the law the Extradition (British Antarctic Territory) (Commonwealth Countries, Colonies and Republic of Ireland) Order 1992, SI 1992/1300, had been made.

5 Extradition Act 1989 s 32(2), which is expressed to be without prejudice to the generality of s 32(1).

- 6 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.
- 7 Ie that part of Ireland previously officially known as Eire and originally called the Irish Free State: see the Eire (Confirmation of Agreements) Act 1938 s 1 (repealed); and the Ireland Act 1949 s 1(1), (3).
- 8 Extradition Act 1989 s 32(2)(a).
- 9 Ibid s 32(2)(b).
- 10 Ibid s 32(3).
- 11 Ie under the Fugitive Offenders Act 1967 s 16 or s 17 (both repealed).
- 12 Extradition Act 1989 s 34(3). The Fugitive Offenders Act 1967 s 17 (repealed) was in similar terms to the Extradition Act 1989 s 32: see the text and notes 1-10 supra.
- 13 Fugitive Offenders Act 1967 17(1) (repealed).
- 14 See the Fugitive Offenders (Anguilla) Order 1987, SI 1987/452.
- 15 See the Fugitive Offenders (Bermuda) Order 1967, SI 1967/1905 (amended by SI 1968/292; SI 1968/1375; SI 1968/1696; SI 1977/47; SI 1981/1803).
- 16 See the Fugitive Offenders (British Indian Ocean Territory) Order 1968, SI 1968/183 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 17 See the Fugitive Offenders (Cayman Islands) Order 1968, SI 1968/112 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 18 See the Fugitive Offenders (Falkland Islands and Dependencies) Order 1968, SI 1968/113 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 19 See the Fugitive Offenders (Gibraltar) Order 1967, SI 1967/1909 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 20 See the Fugitive Offenders (Montserrat) Order 1967, SI 1967/1913 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 21 See the Fugitive Offenders (Pitcairn) Order 1968, SI 1968/884 (amended by SI 1968/1375; SI 1973/761; SI 1977/47; SI 1981/1803).
- 22 See the Fugitive Offenders (St Helena) Order 1968, SI 1968/184 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 23 See the Fugitive Offenders (Sovereign Base Areas of Akrotiri and Dhekelia) Order 1967, SI 1967/1916 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 24 See the Fugitive Offenders (Turks and Caicos Islands) Order 1968, SI 1968/185 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 25 See the Fugitive Offenders (Virgin Islands) Order 1967, SI 1967/1915 (amended by SI 1968/292; SI 1968/1375; SI 1977/47; SI 1981/1803).
- 26 Ie under the Fugitive Offenders Act 1967 s 17 (repealed): see note 12 supra.
- 27 Ie set out in ibid Sch 1 (repealed).
- 28 See eg the Fugitive Offenders (Genocide) Order 1970, SI 1970/148 (amended by SI 1987/453); the Hijacking Act 1971 (Overseas Territories) Order 1971, SI 1971/1739 (amended by SI 1973/1893); the Protection of Aircraft Act 1973 (Overseas Territories) Order 1973, SI 1973/1757; the Aviation Security (Anguilla) Order 1987, SI 1987/451; the Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979, SI 1979/456; the Internationally Protected Persons (Anguilla) Order 1987, SI 1987/454; the Taking of Hostages Act 1982 (Overseas Territories) Order 1982, SI 1982/1540 (amended by SI 1987/455).
- 29 Any Order in Council under the Extradition Act 1989 s 33 is subject to annulment in pursuance of a resolution of either House of Parliament: s 33(3).

30 Ibid s 33(1), which is expressed to be without prejudice to the powers exercisable by virtue of s 32 (see the text and notes 1-10 supra).

31 Ibid s 33(1)(a).

32 Ibid s 33(1)(b). The legislature of any colony has power to make provision, not inconsistent with any Order in Council under s 33 or s 32 (see the text and notes 1-10 supra) which extends to that colony, for any purpose for which provision could be made by such an Order in Council: s 33(2).

33 The Extradition Act 1989 s 34 applies: (1) to any provision of the Extradition Act 1989 that corresponds to a provision of the Extradition Act 1870 with amendments made by the Criminal Justice Act 1988; and (2) to any provision of the Extradition Act 1989 that corresponds to a provision of the Fugitive Offenders Act 1967 with amendments and repeals made by the Criminal Justice Act 1988: Extradition Act 1989 s 34(2). The repeal by the Extradition Act 1989 of the Fugitive Offenders Act 1967 does not affect an Order in Council made under s 16 (repealed) or s 17 (repealed) or the power to revoke or amend such an Order: Extradition Act 1989 s 34(3).

34 Ibid s 34(1).

UPDATE

1270-1274 United Kingdom Colonies

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1271 Extradition between colonies and the United Kingdom, Commonwealth countries, the Republic of Ireland and other colonies

NOTE 4--SI 1992/1300 replaced: Extradition (Overseas Territories) Order 2002, SI 2002/1823.

TEXT AND NOTES 14-18--Orders cited replaced: SI 2002/1823.

NOTE 19--SI 1967/1909 (as amended) revoked: SI 2002/1823.

TEXT AND NOTES 20-25--Orders cited replaced: SI 2002/1823.

NOTE 28--SI 1986/451 revoked: SI 2000/3059.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/8. UNITED KINGDOM COLONIES/(1) PART III ARRANGEMENTS/1272. Extradition between colonies and foreign states.

1272. Extradition between colonies and foreign states.

Upon the making of an Order in Council under the Extradition Act 1989¹, the provisions of the Extradition Act 1989 relating to general extradition arrangements² and the provision of the Extradition Act 1989 relating to persons serving sentences outside the country of conviction³, unless the Order otherwise provides, extend to every colony⁴, as regards the extradition arrangements to which the Order refers, but subject⁵ (1) to certain modifications⁶; and (2) to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order⁷.

The Extradition Act 1989 also provides for the possibility of special extradition arrangements between a colony and a foreign state⁸. Her Majesty may by Order in Council⁹ direct that this provision extends to any colony specified in the Order in the case of foreign states¹⁰ with whom there are no general extradition arrangements, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order¹¹. Where arrangements have been made in respect of a person under which extradition procedures¹² will be available as between a colony to which this provision applies and a foreign state, such extradition procedures are to be available in the case of that person, as between the colony and the state with whom the arrangements have been made, subject¹³ (a) to the modifications of the Extradition Act 1989¹⁴; (b) to any further modifications as to procedure prescribed by the law of the colony¹⁵; and (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements¹⁶. If the governor or the Secretary of State issues a certificate¹⁷ that such arrangements have been made, and that such extradition procedures are available in the case of the person named in the certificate as between the colony and the foreign state to the extent specified in the certificate, it is conclusive evidence of all matters stated in it¹⁸.

1 Ie under the Extradition Act 1989 s 4 (as amended) (see PARA 1170 ante).

2 Ibid s 30(1)(a). For the meaning of 'general extradition arrangements' see PARA 1169 text to note 5 ante.

3 Ibid s 30(1)(b). As to persons serving sentences outside the country of conviction see s 21 (as amended); and PARA 1113 ante.

4 For the meaning of 'colony' see PARA 1106 note 6 ante.

5 Extradition Act 1989 s 30(1).

6 The modifications are: (1) a reference to the colony is to be substituted for any reference to the United Kingdom (ibid s 30(1)(a), (2)); (2) an extradition request may be made to the governor and the governor may exercise the powers of the Secretary of State (s 30(1)(a), (3)); (3) an extradition request may be made by a consular representative recognised by the governor (s 30(1)(a), (4)); (4) any reference to a magistrate, judge or court is to be construed as a reference to such judicial authority as the law of the colony may provide (s 30(1)(a), (5)); and (5) any further modifications as to procedure prescribed by the law of the colony (s 30(1)(b)). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. For the meaning of 'extradition request' see PARA 1184 ante. For the meaning of 'governor' see PARA 1201 note 7 ante. As to the Secretary of State see PARA 1116 ante.

7 Ibid s 30(1)(c). Orders in Council made under s 4 (as amended) (see PARA 1170 ante) which apply to colonies are: the European Convention on Extradition Order 1990, SI 1990/1507 (as amended), to the extent provided by the European Convention on Extradition (Dependent Territories) Order 1996, SI 1996/2875 (see PARA 1121 note 21 ante); the Extradition (Tokyo Convention) Order 1997, SI 1997/1768 (see PARA 1162 note 11 ante); the Extradition (Hijacking) Order 1997, SI 1997/1763 (see PARA 1162 note 12 ante); the Extradition (Aviation Security) Order 1997, SI 1997/1760 (see PARA 1162 note 13 ante); the Extradition (Internationally Protected Persons) Order 1997, SI 1997/1764 (see PARA 1162 note 14 ante); the Extradition (Taking of Hostages) Order 1997, SI 1997/1767 (see PARA 1162 note 15 ante); the Extradition (Protection of Nuclear Material) Order 1997, SI 1997/1765 (see PARA 1162 note 16 ante); the Extradition (Torture) Order 1997, SI 1997/1769 (see PARA

1162 note 17 ante); the Extradition (Drug Trafficking) Order 1997, SI 1997/1762 (see PARA 1162 note 18 ante); and the Extradition (Safety of Maritime Navigation) Order, SI 1997/1766 (see PARA 1162 note 19 ante).

8 See the Extradition Act 1989 s 31; and the text and notes 9-18 infra.

9 At the date at which this volume states the law no such Orders in Council had been made.

10 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

11 Extradition Act 1989 s 31(1).

12 Ie under ibid Pt III (ss 7-17) (as amended) or s 21 (as amended) (see PARA 1113 ante).

13 Ibid s 31(2).

14 Ibid s 31(2)(a), which refers to the modifications set out in s 30(2)-(5) (see note 6 supra).

15 Ibid s 31(2)(b).

16 Ibid s 31(2)(c).

17 As to the form of documents under the Extradition Act 1989 see s 28 (as amended); and PARA 1193 ante.

18 Ibid s 31(3).

UPDATE

1270-1274 United Kingdom Colonies

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

1272 Extradition between colonies and foreign states

NOTE 7--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/8. UNITED KINGDOM COLONIES/(2) SCHEDULE 1 ARRANGEMENTS/1273. Schedule 1 procedures.

(2) SCHEDULE 1 ARRANGEMENTS

1273. Schedule 1 procedures.

Where Schedule 1 to the Extradition Act 1989¹ has effect in the case of any foreign state², every fugitive criminal³ of that state who is in or suspected of being in⁴ any part of Her Majesty's dominions⁵, or that part which is specified in the Order in Council⁶ relating to that state (as the case may be), is liable to be apprehended and surrendered⁷ in a manner provided by that Schedule, whether the crime in respect of which the surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime⁸.

1 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante.

3 For the meaning of 'fugitive criminal' see PARA 1196 ante.

4 See PARA 1195 note 4 ante.

5 As to Her Majesty's dominions see PARA 1195 note 5 ante.

6 Ie an Order in Council made under the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante.

7 As to the apprehension and surrender of a fugitive criminal see the Extradition Act 1989 Sch 1 paras 4, 5, 8 (all prospectively amended); and PARAS 1209-1212, 1215-1216 ante.

8 Ibid Sch 1 para 3; and PARA 1195 ante.

UPDATE

1270-1274 United Kingdom Colonies

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/8. UNITED KINGDOM COLONIES/(2) SCHEDULE 1 ARRANGEMENTS/1274. Extradition between colonies and foreign states.

1274. Extradition between colonies and foreign states.

The provisions of Schedule 1 to the Extradition Act 1989¹, when applied by Order in Council², unless otherwise provided by such Order, extend to every colony³ in the same manner as if throughout those provisions a reference to the colony were substituted for the United Kingdom⁴ or England and Wales, as the case may require, but with the following modifications, namely⁵: (1) the requisition for the surrender of a fugitive criminal⁶ who is in or suspected of being in a colony may be made to the governor⁷ of that colony by any person recognised by that governor as a consular representative, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state⁸ on behalf of which the requisition is made) as the governor of such colony or dependency⁹; (2) no warrant of the Secretary of State¹⁰ is required, and all powers vested in or acts authorised or required to be done under the provisions by the metropolitan magistrate¹¹ and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the colony alone¹²; (3) a judge of any court exercising in the colony the like powers as the High Court¹³ exercises in England and Wales may exercise the power of discharging a criminal¹⁴ when not conveyed within two months out of such British possession¹⁵.

There are a number of Orders in Council which extend to United Kingdom colonies¹⁶.

1 Ie the Extradition Act 1989 s 1(3), Sch 1 (as amended).

2 Ie an Order in Council under the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante.

3 For the meaning of 'colony' for these purposes see PARA 1200 note 4 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 Extradition Act 1989 Sch 1 para 16; and see PARA 1201 ante.

6 For the meaning of 'fugitive criminal' see PARA 1196 ante.

7 For the meaning of 'governor' see PARA 1201 note 7 ante.

8 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante.

9 Extradition Act 1989 Sch 1 para 16(a); and see PARA 1201 ante.

10 As to the Secretary of State see PARA 1116 ante.

11 For the meaning of 'metropolitan magistrate' see PARA 1201 note 11 ante. As to the role of the magistrate see PARA 1115 ante.

12 Extradition Act 1989 Sch 1 para 16(b); and see PARA 1201 ante.

13 For the meaning of 'High Court' see PARA 1174 note 2 ante.

14 As to the discharge of persons apprehended if not conveyed out of the United Kingdom within two months see the Extradition Act 1989 Sch 1 para 10; and PARA 1258 ante.

15 Ibid Sch 1 para 16(c); and see PARA 1201 ante. For the meaning of 'British possession' see PARA 1201 note 15 ante.

16 See the Orders in Council in PARA 1158 notes 4-25 and 34-55; but see also PARA 1158 note 53; and the Orders in Council in PARA 1272 note 7 ante.

UPDATE

1270-1274 United Kingdom Colonies

The Extradition Act 1989 is replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1275. Procedure.

9.

1275. Procedure.

The procedure relating to extradition to the United Kingdom¹ is governed by: (1) the arrangements set out in treaties, in respect of which Orders in Council have been made²; (2) extradition arrangements made with foreign states³; (3) the arrangements in the treaty with the Hong Kong Special Administrative Region⁴; or (4) in the case of designated Commonwealth countries⁵ and colonies⁶, by the laws of that country or colony.

A warrant for the arrest of a person sought by the United Kingdom is usually a warrant of arrest on sworn information under the Magistrates' Courts Act 1980⁷. Depositions are taken before a magistrate⁸. The relevant provisions of English law may be set out in depositions made by the Crown Prosecution Service⁹. The Secretary of State¹⁰ issues a formal request for the person's return and the papers are forwarded through diplomatic channels to the requested country¹¹.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 I.e. an Order in Council pursuant to the Extradition Act 1870 s 2 (repealed): see PARA 1158 ante. Most requests made by the United Kingdom in Schedule 1 cases are made to the United States: see PARA 1158 note 23 ante. For the meaning of 'Schedule 1 cases' see PARA 1110 ante.

3 See the Extradition Act 1989 s 3 (as amended); and PARA 1169 ante. For examples of extradition arrangements made with foreign states see the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) (the Articles of which are set out in the European Convention on Extradition Order 1990, SI 1990/1507, Sch 1) (see PARAS 1130-1153 ante); and the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (London, 18 July 1995; TS 58 (1997); Cm 3759) (the Articles of which are set out in the Brazil (Extradition) Order 1997, SI 1997/1176, Schedule) (see PARA 1156 ante).

4 See the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Surrender of Fugitive Offenders (Hong Kong, 5 November 1997; TS 30 (1998); Cm 4034). The Agreement entered into force on 19 March 1998: see PARA 1157 note 4 ante. As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

5 For the meaning of 'designated Commonwealth country' see PARA 1120 ante. The United Kingdom signed an extradition treaty with India in 1992: see PARA 1155 note 2 ante. India is also a designated Commonwealth country for the purposes of the Extradition Act 1989: see PARA 1120 text and note 20 ante.

6 For the meaning of 'colony' see PARA 1106 note 6 ante.

7 I.e. the Magistrates' Courts Act 1980 s 1 (as amended): see MAGISTRATES vol 29(2) (Reissue) PARA 522 et seq.

8 See MAGISTRATES.

9 As to the Crown Prosecution Service see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1079 et seq.

10 As to the Secretary of State see PARA 1116 ante.

11 As to diplomatic correspondence etc see INTERNATIONAL RELATIONS LAW.

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1275 Procedure

NOTE 3--SI 1990/1507, replaced by European Convention on Extradition Order 2001, SI 2001/962, lapsed on repeal of enabling authority by Extradition Act 2003 Sch 4. See further PARAS 1401-1554.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1276. Specialty protection under Schedule 1 to the Extradition Act 1989.

1276. Specialty protection under Schedule 1 to the Extradition Act 1989.

Where in pursuance of any arrangement with a foreign state¹, any person accused or convicted² of an extradition crime³ is surrendered by that foreign state, that person is not, until he has been restored or had an opportunity of returning to such foreign state, to be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions⁴ other than such of the said crimes as may be proved by the facts on which the surrender is grounded⁵. The words 'such of the said crimes as may be proved by the facts on which the surrender is grounded' means such of the crimes as may be disclosed by the facts alleged in the extradition proceedings⁶.

The court in the United Kingdom is not concerned with the treaty between the United Kingdom and the country from which the fugitive was surrendered, but with the provisions of the United Kingdom extradition legislation⁷.

1 For the meaning of 'foreign state' see PARA 1102 note 1 ante. See also PARA 1200 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

2 For the meaning of 'convicted' see PARA 1196 note 2 ante.

3 For the meaning of 'extradition crime' for these purposes see PARA 1197 ante.

4 As to Her Majesty's dominions see PARA 1195 note 5 ante.

5 Extradition Act 1989 s 1(3), Sch 1 para 17.

6 *R v Aubrey-Fletcher, ex p Ross-Munro* [1968] 1 QB 620, [1968] 1 All ER 99, DC (decided under the Extradition Act 1870 s 19 (repealed)). See also *R v Corrigan* [1931] 1 KB 527, 47 TLR 27; *R v Davidson* (1976) 64 Cr App Rep 209, CA; *R v Kerr and Smith* (1975) 62 Cr App R 210, CA.

7 *R v Davidson* (1976) 64 Cr App Rep 209, CA (decided under the Extradition Act 1870 s 19 (repealed)). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1277. Specialty protection under Part III of the Extradition Act 1989.

1277. Specialty protection under Part III of the Extradition Act 1989.

Where any person is returned to the United Kingdom¹ by a foreign state² in pursuance of extradition arrangements³, he is not, unless he has first been restored or had an opportunity of leaving the United Kingdom⁴, to be triable or tried for any offence committed prior to the surrender in any part of the United Kingdom, other than⁵: (1) an offence in respect of which he was returned⁶; or (2) any offence disclosed by the particulars furnished to the foreign state on which his return is grounded⁷; or (3) any other offence in respect of which the foreign state may consent to his being tried⁸.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

2 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

3 For the meaning of 'extradition arrangements' see PARA 1169 text to note 4 ante.

4 No period for leaving the United Kingdom is specified in the Extradition Act 1989 s 18 (cf ss 19, 19A (as added); and PARA 1278-1280 post). The relevant extradition arrangements provide for a period of 45 days of final discharge: see the European Convention on Extradition (Paris, 13 December 1957; TS 97 (1991); Cm 1762) Art 14 para 1(b); the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (London, 18 July 1995; TS 58 (1997); Cm 3759) Art 12(1)(b); and PARAS 1143, 1156 ante.

5 Extradition Act 1989 s 18(1).

6 Ibid s 18(1)(a).

7 Ibid s 18(1)(b).

8 Ibid s 18(1)(c).

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1278. Specialty protection on surrender from a designated Commonwealth country or a colony.

1278. Specialty protection on surrender from a designated Commonwealth country or a colony.

Any person accused or convicted of an offence under the law of or of any part of the United Kingdom¹ who is returned to the United Kingdom² (1) from any designated Commonwealth country³, under any law of that country corresponding with the Extradition Act 1989⁴; (2) from any colony⁵, under the Extradition Act 1989 as extended to that colony or under any corresponding law of that colony⁶, may not, during the specified period⁷, be dealt with in the United Kingdom for or in respect of any offence committed before he was returned to the United Kingdom other than⁸: (a) the offence in respect of which he was returned⁹; (b) any lesser offence disclosed by the particulars furnished to the Commonwealth country or colony on which his return is grounded¹⁰; or (c) any other offence in respect of which the government of the Commonwealth country or governor¹¹ of the colony from which he was returned may consent to his being dealt with¹².

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

2 Extradition Act 1989 s 19(1).

3 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

4 Extradition Act 1989 s 19(1)(a).

5 For the meaning of 'colony' see PARA 1106 note 6 ante.

6 Extradition Act 1989 s 19(1)(b).

7 The period referred to in *ibid* s 19(2) in relation to a person to whom s 19 applies is the period beginning with the day of his arrival in the United Kingdom on his return as mentioned in s 19(1) and ending 45 days after the first subsequent day on which he has the opportunity to leave the United Kingdom: s 19(3).

8 *Ibid* s 19(2).

9 *Ibid* s 19(2)(a).

10 *Ibid* s 19(2)(b).

11 For the meaning of 'governor' see PARA 1201 note 7 ante.

12 Extradition Act 1989 s 19(2)(c). 'Dealt with' means tried or returned or surrendered to any country or colony or detained with a view to trial or with a view to such return or surrender: s 19(5).

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1279. Specialty protection on surrender from the Hong Kong Special Administrative Region.

1279. Specialty protection on surrender from the Hong Kong Special Administrative Region.

Any person accused or convicted of an offence under the law of or any part of the United Kingdom¹ who is returned to the United Kingdom from the Hong Kong Special Administrative Region² under any law of that Region corresponding to the Extradition Act 1989³ may not, during the specified period⁴, be dealt with in the United Kingdom for or in respect of any offence committed before he was returned to the United Kingdom other than⁵: (1) the offence in respect of which he was returned⁶; (2) any lesser offence disclosed by the particulars furnished to the Hong Kong Special Administrative Region on which his return is grounded⁷; or (3) any other offence in respect of which the government of the Hong Kong Special Administrative Region may consent to his being dealt with⁸.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

2 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

3 Extradition Act 1989 s 19A(1) (s 19A added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 10).

4 The period referred to in the Extradition Act 1989 s 19A(2) (as added), in relation to a person to whom s 19A (as added) applies, is the period beginning with the day of his arrival in the United Kingdom on his return as mentioned in s 19A(1) (as added) and ending 40 days after the first subsequent day on which he has the opportunity to leave the United Kingdom: s 19A(3).

5 Ibid s 19A(2).

6 Ibid s 19A(2)(a).

7 Ibid s 19A(2)(b).

8 Ibid s 19A(2)(c). For the meaning of 'dealt with' see PARA 1278 note 12 ante.

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1280. Convictions for which return is not granted.

1280. Convictions for which return is not granted.

Where any person returned to the United Kingdom¹ has been convicted before his return of an offence for which his return was not granted, any punishment for that offence must be remitted; but his conviction for it must be treated as a conviction for all other purposes².

¹ For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

² Extradition Act 1989 ss 18(2), 19(4), 19A(4) (s 19A added by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 10).

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1281. Return to requested country.

1281. Return to requested country.

If, in the case of a person accused of an offence under the law of the United Kingdom¹ who is returned to the United Kingdom², either: (1) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the United Kingdom on being returned³; or (2) on his trial for that offence, he is acquitted or discharged under any of certain provisions⁴, the Secretary of State⁵ may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the jurisdiction of the foreign state⁶, Commonwealth country⁷ or colony⁸, or of the Hong Kong Special Administrative Region⁹, from which he was returned¹⁰.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 Extradition Act 1989 s 20(1) (amended by the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 11(a)). This provision refers to a return to the United Kingdom in pursuance of extradition arrangements or as mentioned in the Extradition Act 1989 s 19(1) (see PARA 1278 ante) or s 19A(1) (as added) (see PARA 1279 ante). For the meaning of 'extradition arrangements' see PARA 1169 text to note 4 ante.

3 Ibid s 20(2)(a).

4 Ibid s 20(2)(b) (amended by the Criminal Justice Act 1991 s 100, Sch 11 para 39; and the Hong Kong (Extradition) Order 1997, SI 1997/1178, art 2, Schedule para 11(b)). The provisions referred to in the text are: (1) the Powers of Criminal Courts Act 1973 s 1A(1) (as added and amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 499); (2) the Criminal Procedure (Scotland) Act 1975 s 182 or s 383 (repealed) (see now the Criminal Procedure (Scotland) Act 1995); (3) the Probation Act (Northern Ireland) 1950 s 5(1): see the Extradition Act 1989 s 20(2)(b) (as so amended).

5 As to the Secretary of State see PARA 1116 ante.

6 For the meaning of 'foreign state' see PARA 1102 note 1 ante.

7 For the meaning of 'designated Commonwealth country' see PARA 1120 ante.

8 For the meaning of 'colony' see PARA 1106 note 6 ante.

9 As to the Hong Kong Special Administrative Region see PARAS 1157, 1166 note 8 ante.

10 Extradition Act 1989 s 20(2).

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1282. Persons extradited to the United Kingdom.

1282. Persons extradited to the United Kingdom.

A short-term or long-term prisoner¹ is an extradited prisoner for these purposes if²: (1) he was tried for the offence in respect of which his sentence was imposed³ (a) after having been extradited to the United Kingdom⁴; and (b) without having first been restored or had an opportunity of leaving the United Kingdom⁵; and (2) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in head (1) above⁶. If, in the case of an extradited prisoner, the court by which he was sentenced so ordered, the provision relating to computation of sentences of imprisonment⁷ has effect in relation to him as if a period specified in the order were a relevant period for the purposes of that provision⁸. The period that may be so specified is such period as in the opinion of the court is just in all the circumstances and does not exceed the period of custody mentioned in head (2) above⁹.

1 For the meanings of 'short-term prisoner' and 'long-term prisoner' see PRISONS vol 36(2) (Reissue) PARA 617.

2 Criminal Justice Act 1991 s 47(1).

3 Ibid s 47(1)(a).

4 Ibid s 47(1)(a)(i). 'Extradited to the United Kingdom' means returned to the United Kingdom: (1) in pursuance of extradition arrangements; (2) under any law of a designated Commonwealth country corresponding to the Extradition Act 1989; (3) under the Extradition Act 1989 as extended to a colony or under any corresponding law of a colony; (4) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965 (see PARAS 1284-1305 post); or (5) in pursuance of arrangements with a foreign state in respect of which an Order in Council under the Extradition Act 1870 s 2 (repealed) (see PARA 1158 ante) is in force: Criminal Justice Act 1991 s 47(4) (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 48(1)). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante. For the meaning of 'extradition arrangements' see PARA 1169 text to note 4 ante; definition applied by the Criminal Justice Act 1991 s 47(4). For the meaning of 'designated Commonwealth country' see PARA 1120 ante; definition applied by s 47(4). For the meaning of 'colony' see PARA 1106 note 6 ante.

5 Ibid s 47(1)(a)(ii).

6 Ibid s 47(1)(b).

7 Ie the Criminal Justice Act 1967 s 67 (as amended).

8 Criminal Justice Act 1991 s 47(2). As from a day to be appointed, s 47(2) is to be substituted so that, in the case of an extradited prisoner, the Crime (Sentences) Act 1997 s 9 (crediting of periods of remand in custody) has effect as if the days for which he was kept in custody while awaiting extradition were days for which he was remanded in custody in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence: Criminal Justice Act 1991 s 47(2) (prospectively substituted by the Crime and Disorder Act 1998 s 119, Sch 8 para 90). At the date at which this volume states the law no such day had been appointed.

9 Criminal Justice Act 1991 s 47(3).

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1282 Persons extradited to the United Kingdom

TEXT AND NOTES--1991 Act s 47 (amended by Police and Justice Act 2006 Sch 13 para 33) repealed with savings (SI 2005/950): Criminal Justice Act 2003 Sch 37 Pt 7.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/9. EXTRADITION TO THE UNITED KINGDOM/1283. Abuse of process.

1283. Abuse of process.

Where process of law is available to return an accused to the United Kingdom¹ through extradition procedures, the United Kingdom courts should refuse to try him if he has been forcibly brought within the jurisdiction of the United Kingdom in disregard of those procedures by a process to which the United Kingdom police or the United Kingdom prosecuting or other executive authorities have been a knowing party². The jurisdiction of the High Court to stay the trial of the accused as an abuse of the process exists even though he may be able to have a fair trial once in the United Kingdom, and even though it would not have been unfair to have returned him through extradition procedures; the rule of law must be maintained by a willingness on the part of the judiciary to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law; and the High Court has the power to refuse to allow prosecuting authorities to take advantage of abuse of power by flouting extradition safeguards and depriving the accused of the safeguards built into the extradition process for his benefit³. To succeed in an application to have a prosecution stayed on this ground, it would be necessary to show that the law enforcement agency responsible for bringing a prosecution has only been enabled to do so by participating in, or encouraging, violations of international law and the laws of another state⁴. A magistrates' court has the power to exercise control over its proceedings through an abuse of process jurisdiction, but this power is strictly confined to matters directly affecting the fairness of the trial of the particular accused with whom it is dealing (such as delay or unfair manipulation of court procedures); the power of the magistrates' court does not extend to the wider supervisory jurisdiction for upholding the rule of law, which is vested in the High Court; and so, if a serious question arises as to the deliberate abuse of extradition procedures, a magistrate⁵ should allow an adjournment so that an application can be made to the High Court⁶. If the state returning the defendant to the United Kingdom deports him in accordance with its domestic law and international law, where extradition would have been available, but where the United Kingdom authorities have not procured the deportation, or colluded in any impropriety, no abuse of process has been found⁷. If, on the other hand, the United Kingdom authorities procure a deportation from an overseas state, in breach of domestic provisions, because they fear that an application by them for extradition of the defendant would fail, this has been found to amount to an abuse of the process⁸.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 at 62, sub nom *Bennet v Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 151, HL, per Lord Griffiths.

3 *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 at 61-62, sub nom *Bennet v Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 150-151, HL, per Lord Griffiths.

4 *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 at 67, sub nom *Bennet v Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 155, HL, per Lord Bridge of Harwich, at 73-75, 77 and 160-161, 163 per Lord Lowry (the power would not be exercised for a venial irregularity).

5 As to the role of the magistrate see PARA 1115 ante.

6 *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 at 64, sub nom *Bennet v Horseferry Road Magistrates' Court* [1993] 3 All ER 138 at 152, HL, per Lord Griffiths.

7 See *R v Staines Magistrates' Court, ex p Westfallen* [1998] 4 All ER 210, [1998] 1 WLR 652, DC.

8 See *R v Nicholas Mullen* [1999] 2 Cr App Rep 143, CA, in which the British authorities deliberately procured the deportation of a suspected terrorist in circumstances where they feared that extradition would not succeed and in which they also procured breaches of local Zimbabwean law. This was held to amount to an abuse of the process, following the principles of *R v Horseferry Magistrates' Court, ex p Bennett* [1994] 1 AC 42, sub nom *Bennet v Horseferry Road Magistrates' Court* [1993] 3 All ER 138, HL.

UPDATE

1275-1283 Extradition to the United Kingdom

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(1) INTRODUCTION/1284. Statutory basis.

10.

(1) INTRODUCTION

1284. Statutory basis.

Provision for the arrest and return of persons convicted or accused of offences against the laws of the Republic of Ireland, who are found in the United Kingdom¹, the Channel Islands or the Isle of Man, is made by the Backing of Warrants (Republic of Ireland) Act 1965². Under the Act, a warrant of arrest issued in the Republic of Ireland which has been indorsed by a justice of the peace in any part of the United Kingdom is to be treated, for the purposes of any enactment or rule of law relating to warrants of arrest, as if it had been issued by him and the warrant is for the person charged with an offence committed in that part³. A person arrested under an indorsed warrant may be subsequently delivered into the custody of the Garda Síochána (the police force of the Republic of Ireland) subject to the provisions of the Act restricting such return⁴.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 Backing of Warrants (Republic of Ireland) Act 1965 s 13(1). The Backing of Warrants (Republic of Ireland) Act 1965 repealed earlier legislation on the subject, although those repealed statutes still apply in relation to Northern Ireland as they did to the Republic of Ireland: see s 9(1), (3). The Backing of Warrants (Republic of Ireland) Act 1965 (except ss 9(3), 13) came into force on 15 November 1965 (see s 13(2); and the Backing of Warrants (Republic of Ireland) Act 1965 (Commencement) Order 1965, SI 1965/1850), although it applies to offences committed or alleged to have been committed before that date (see the Backing of Warrants (Republic of Ireland) Act 1965 s 13(3)). Sections 9(3), 13 came into force on the passing of the Act (ie on 5 August 1965): s 13(2).

The reciprocal legislation to the Backing of Warrants (Republic of Ireland) Act 1965, in the Republic of Ireland, is to be found in the Republic of Ireland Extradition Act 1965 (No 17), in accordance with which warrants issued in the United Kingdom, the Isle of Man or the Channel Islands may be backed in the Republic of Ireland.

3 Backing of Warrants (Republic of Ireland) Act 1965 s 1(4).

4 See eg paras 1291, 1294, 1296-98 post.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(1) INTRODUCTION/1285. Application and extension of the Backing of Warrants (Republic of Ireland) Act 1965.

1285. Application and extension of the Backing of Warrants (Republic of Ireland) Act 1965.

The Backing of Warrants (Republic of Ireland) Act 1965 extends to the Channel Islands and the Isle of Man (collectively referred to as the Islands), and has effect as if each of them were a part of the United Kingdom¹. Her Majesty may by Order in Council direct that the Backing of Warrants (Republic of Ireland) Act 1965, in its application to any of the Islands, is to have effect subject to such exceptions, adaptations and modifications as may be specified in the Order².

¹ Backing of Warrants (Republic of Ireland) Act 1965 s 12(1). However, subject to s 12(1), references in the Backing of Warrants (Republic of Ireland) Act 1965 to a part of the United Kingdom, are references to England and Wales, to Scotland or to Northern Ireland: s 10(2). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

² Ibid s 12(2). An Order in Council under s 12(2) may be varied or revoked by a subsequent Order in Council thereunder: s 12(3). The following Orders in Council have been made under s 12(2), modifying the Backing of Warrants (Republic of Ireland) Act 1965, to suit the differing administration and jurisdiction of the Islands: the Backing of Warrants (Republic of Ireland and Guernsey) Order 1965, SI 1965/1874; the Backing of Warrants (Republic of Ireland and Isle of Man) Order 1965, SI 1965/1875; and the Backing of Warrants (Republic of Ireland and Jersey) Order 1965, SI 1965/1876. The power to make Orders in Council is exercisable by statutory instrument: see the Statutory Instruments Act 1946 s 1(1); and STATUTES vol 44(1) (Reissue) PARA 1503.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(1) INTRODUCTION/1286. No prima facie case required.

1286. No prima facie case required.

The Backing of Warrants (Republic of Ireland) Act 1965 provides merely for a formal process of indorsement, but does not require the proof of the existence of a prima facie case¹.

¹ *Re Arkins* [1966] 3 All ER 651 at 655, sub nom *R v Metropolitan Police Comr, ex p Arkins* [1966] 1 WLR 1593 at 1599, DC, per Lord Parker CJ; *Keane v Governor of Brixton Prison* [1972] AC 204 at 214, [1971] 1 All ER 1163 at 1166-1167, HL, per Lord Pearson; *Re Dwyer* (13 April 1970, unreported), DC. For the procedure before a magistrates' court see PARAS 1291-1293 post.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(2) PROCEDURE BEFORE ARREST/1287. Warrants which may be indorsed.

(2) PROCEDURE BEFORE ARREST

1287. Warrants which may be indorsed.

Where a warrant has been issued by a judicial authority¹ in the Republic of Ireland for the arrest of a person accused or convicted of an offence against the laws of that country, then subject to certain provisions in the Backing of Warrants (Republic of Ireland) Act 1965 (which provide that an application for the indorsement of the warrant is to be made to a justice of the peace by a constable, under oath)², the justice must indorse the warrant in the prescribed form for execution³ within the part of the United Kingdom comprising the area for which he acts, if the offence is either an indictable offence⁴ or an offence punishable on summary conviction with imprisonment⁵ for six months⁶.

A warrant for the arrest of a person accused of an offence which, under the laws of the Republic of Ireland, is not indictable but which is punishable on summary conviction with imprisonment for six months, must not be indorsed under the Backing of Warrants (Republic of Ireland) Act 1965⁷ unless:

- 89 (1) the person accused has failed to appear in answer to a summons issued by or on behalf of a court in the Republic of Ireland requiring his presence before the court for the trial of the offence and, not less than 14 days⁸ before the date named in the summons for his appearance, the summons was served on him personally in the Republic of Ireland or a notice of the issue of the summons, together with a copy of the summons, was served on him personally in the United Kingdom⁹; or
- 90 (2) having entered into a recognisance for his appearance before a court in the Republic of Ireland for the trial of the offence, he has failed to appear in pursuance of the recognisance¹⁰; or
- 91 (3) having appeared before a court in the Republic of Ireland for the trial of the offence, he has subsequently failed to appear on any date to which the proceedings were adjourned¹¹.

1 'Judicial authority' means a court, judge or justice of a court, or peace commissioner: Backing of Warrants (Republic of Ireland) Act 1965 s 10(1).

2 *le ibid* s 1 (as amended): see PARA 1288 post.

3 Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). For the form of indorsement of the warrant of arrest see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 1, Schedule Form 1.

Any reference in the Backing of Warrants (Republic of Ireland) Act 1965 to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment: s 10(4).

4 'Indictable offence' does not include an offence which is triable on indictment only at the instance of or with the consent of the accused: *ibid* s 10(1).

5 'Imprisonment' includes any form of detention: *ibid* s 10(1).

6 Ibid s 1(1)(a).

7 le under ibid s 1 (as amended).

8 This period is to be reckoned exclusive of the day on which the summons or notice was served and of the day named in the summons for appearance: see *R v Turner* [1910] 1 KB 346 at 359-360, CCA, per Channell J; *Re Hector Whaling Ltd* [1936] Ch 208 at 210 per Bennett J. As to the reckoning of time generally see TIME.

9 Backing of Warrants (Republic of Ireland) Act 1965 s 1(2)(a). For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

10 Ibid s 1(2)(b).

11 Ibid s 1(2)(c).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(2) PROCEDURE BEFORE ARREST/1288. Application for indorsement of warrant.

1288. Application for indorsement of warrant.

Where an application for the indorsement of the warrant is made to a justice of the peace in the United Kingdom¹ by a constable who produces the warrant and states on oath that he has reason to believe the person named or described in it to be within the area for which the justice acts, or to be on his way to the United Kingdom then, subject to the provisions of the Backing of Warrants (Republic of Ireland) Act 1965 (which state that the warrant must have been issued by a judicial authority in the Republic of Ireland for the arrest of a person accused or convicted of a certain type of offence)², the justice must indorse the warrant in the prescribed form³ for execution within the part of the United Kingdom comprising the area for which he acts⁴.

However, a warrant for the arrest of a person convicted of any offence against the laws of the Republic of Ireland must not be indorsed⁵ under the Backing of Warrants (Republic of Ireland) Act 1965 unless the purpose of the arrest is to enable the person to be brought before a court in the Republic of Ireland for sentence in respect of the conviction⁶, or to be taken to a place where he is to undergo imprisonment⁷ under such a sentence, not being imprisonment in default of the payment of a fine or other sum⁸. The effect of the indorsement of a warrant by a justice of the peace in any part of the United Kingdom, for the purposes of any enactment or rule of law relating to warrants of arrest, is that the warrant is to be treated as issued by the justice, for the arrest of a person charged with an offence committed in that part of the United Kingdom for which the justice acts⁹.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 In the Backing of Warrants (Republic of Ireland) Act 1965 s 1 (as amended): see PARA 1287 ante.

3 Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). For the form of indorsement of the warrant of arrest see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 1, Schedule Form 1. See also PARA 1287 note 3 ante.

4 Backing of Warrants (Republic of Ireland) Act 1965 s 1(1)(b) (amended by the Criminal Justice and Public Order Act 1994 s 159(2)). See also *Re Arkins* [1966] 3 All ER 651 at 654, sub nom *R v Metropolitan Police Comr, ex p Arkins* [1966] 1 WLR 1593 at 1597, DC, per Lord Parker CJ.

5 In the Backing of Warrants (Republic of Ireland) Act 1965 s 1 (as amended).

6 Ibid s 1(3)(a). See also *Re Malinowski* [1987] Crim LR 324, DC (purpose of the Irish warrants was to secure the production of the convicted persons before the Irish Court to hear their appeals, and so was not within the Backing of Warrants (Republic of Ireland) Act 1965 s 1(3)); *Re Lawlor* (1977) 66 Cr App Rep 75 at 79-80, DC, per Michael Davies J (purpose of the Irish warrant was to cause the convicted person to be taken back to the Republic to give evidence in a murder trial, and so was not within the Backing of Warrants (Republic of Ireland) Act 1965 s 1(3)).

7 For the meaning of 'imprisonment' see PARA 1287 note 5 ante.

8 Backing of Warrants (Republic of Ireland) Act 1965 s 1(3)(b); and see note 6 supra.

9 Ibid s 1(4).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1288-1291 Application for indorsement of warrant ... Proceedings before magistrates' court after arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(2) PROCEDURE BEFORE ARREST/1289. Provisional warrants.

1289. Provisional warrants.

A justice of the peace in the United Kingdom¹ may issue a provisional warrant² for a person's arrest on the application of a constable who states on oath:

- 92 (1) that he has reason to believe that a warrant has been issued by a judicial authority³ in the Republic of Ireland for the arrest of a person accused or convicted of an indictable offence⁴ against the laws of that country, but that the warrant is not yet in his possession⁵; and
- 93 (2) that he has received a request made on grounds of urgency by a member of the police force of the Republic of Ireland holding the rank of inspector or above for the issue in the United Kingdom of a warrant for the arrest of that person⁶; and
- 94 (3) that he has reason to believe that person to be within the area for which the justice acts, or to be on his way to the United Kingdom⁷.

However, where the warrant issued in the Republic of Ireland was for the arrest of a convicted person, a provisional warrant must not be issued unless the applicant states on oath that he has reason to believe that the purpose of the arrest is: (a) to enable the person to be brought before a court in that country for sentence in respect of the conviction; or (b) to enable the person to be taken to a place to undergo imprisonment under such a sentence, not being imprisonment in default of the payment of a fine or other sum⁸. The issue of a provisional warrant in any part of the United Kingdom is to be treated, for the purposes of any enactment or rule of law relating to warrants of arrest, as if it were a warrant for the arrest of a person charged with an offence committed in that part, but it is not authority for the making of an arrest more than seven days after the date of its issue⁹.

1 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

2 For the form of provisional warrant see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, s 1, Schedule Form 3. See also PARA 1287 note 3 ante.

3 For the meaning of 'judicial authority' see PARA 1287 note 1 ante.

4 For the meaning of 'indictable offence' see PARA 1287 note 4 ante.

5 Backing of Warrants (Republic of Ireland) Act 1965 s 4(1)(a).

6 Ibid s 4(1)(b).

7 Ibid s 4(1)(c) (amended by the Criminal Justice and Public Order Act 1994 s 159(4)(a)).

8 Backing of Warrants (Republic of Ireland) Act 1965 ss 1(3), 4(1) proviso.

9 Ibid s 4(2) (amended by the Criminal Justice and Public Order Act 1994 s 159(4)(b)).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1288-1291 Application for indorsement of warrant ... Proceedings before magistrates' court after arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(3) PROCEDURE AFTER ARREST/1290. Procedure after arrest on a provisional warrant.

(3) PROCEDURE AFTER ARREST

1290. Procedure after arrest on a provisional warrant.

After a person is arrested under a provisional warrant, he must be brought as soon as is practicable before a magistrates' court, and if there is produced to the court the warrant issued in respect of him in the Republic of Ireland, duly indorsed¹, then the court must proceed as if he had been arrested under that indorsed warrant². In other cases the court may remand him³ for not more than seven days⁴. Where at any time there is produced to a constable, having custody of a person so remanded, the warrant issued in respect of that person in the Republic of Ireland, duly indorsed, the period of the remand is terminated, and the person is thereafter treated as if arrested at that time under the indorsed warrant⁵. If the period of the remand is not determined in this way⁶ then the person remanded must be discharged at the end of the period⁷.

1 He indorsed in accordance with the Backing of Warrants (Republic of Ireland) Act 1965 s 1 (as amended): see PARA 1288 ante.

2 Ibid s 4(3)(a).

3 Remand may be in custody or on bail: see ibid s 5 (as amended); and PARA 1292 post.

4 Ibid s 4(3)(b) (amended by the Criminal Justice and Public Order Act 1994 s 159(4)(c)).

5 Backing of Warrants (Republic of Ireland) Act 1965 s 4(4).

6 He under ibid s 4(4) (see the text and note 5 supra).

7 Ibid s 4(5).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1288-1291 Application for indorsement of warrant ... Proceedings before magistrates' court after arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(3) PROCEDURE AFTER ARREST/1291. Proceedings before magistrates' court after arrest.

1291. Proceedings before magistrates' court after arrest.

As soon as is practicable after a person is arrested under an indorsed warrant¹, he must be brought before a magistrates' court² and, subject to the following provisions, the court must order him to be delivered at some convenient point of departure from the United Kingdom³ into the custody of a member of the Garda Síochána (the police force of the Republic of Ireland), and must remand him until so delivered⁴. Such an order must not be made:

- 95 (1) if it appears to the court⁵ that the offence specified in the warrant does not correspond with any offence⁶ under the law of the part of the United Kingdom in which the court acts, which is an indictable offence or is punishable on summary conviction with imprisonment for six months⁷; or
- 96 (2) if it is shown to the satisfaction of the court that the offence specified in the warrant is an offence of a political character⁸ or an offence under military law which is not also an offence under the general criminal law⁹; or
- 97 (3) if it is shown to the satisfaction of the court that there are substantial grounds for believing that, if taken to the Republic of Ireland, the person named or described in the warrant will be prosecuted or detained for another offence, being an offence of a political character or an offence under military law which is not also an offence under the general criminal law¹⁰; or
- 98 (4) if it is shown to the satisfaction of the court that the warrant is for the arrest of a person accused of an offence committed in Northern Ireland which constitutes an extra-territorial offence¹¹ under the law of the Republic of Ireland¹²; or
- 99 (5) if it is shown to the satisfaction of the court that the person named or described in the warrant has been acquitted or convicted in a trial in Northern Ireland for an extra-territorial offence¹³ in respect of the same act or omission as that in respect of which the warrant is issued¹⁴; or
- 100 (6) if it is shown to the satisfaction of the court that there are substantial grounds for believing that (a) the warrant¹⁵ was in fact issued in order to secure the return of the person named or described in it to the Republic of Ireland for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or (b) he would, if returned to the Republic of Ireland, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions¹⁶; or
- 101 (7) if it is shown to the satisfaction of the court that no provision is made in the law of the Republic of Ireland, in respect of a person delivered up to that country by the United Kingdom, corresponding to the specialty provisions¹⁷ in respect of a person delivered up to the United Kingdom by the Republic of Ireland¹⁸.

The burden of showing that one of the preceding facts exists to the satisfaction of the court is on the applicant¹⁹. The court has no jurisdiction to entertain an application for abuse of process²⁰. In any case where the court does not make an order for the delivery of the person into the custody of a member of the Garda Síochána, the court must order him to be discharged²¹.

¹ ie a warrant indorsed in accordance with the Backing of Warrants (Republic of Ireland) Act 1965 s 1 (as amended): see PARA 1288 ante.

2 The court must consist of at least two justices sitting in open court in a petty sessional or occasional courthouse: *ibid* s 2(4), Schedule para 2. However, this condition does not apply to any stipendiary magistrate sitting in a place appointed for the purpose: Schedule para 2A (added by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 9). As from a day to be appointed, the reference to 'stipendiary magistrate' is to be replaced with a reference to 'District Judge (Magistrates' Court)': see the Backing of Warrants (Republic of Ireland) Act 1965 Schedule para 2A (as so added; and prospectively amended by the Access to Justice Act 1999 s 78(2), Sch 11 para 18); and the Justices of the Peace Act 1997 s 10(E) (prospectively added by the Access to Justice Act 1999 s 78(1)). At the date at which this volume states the law no such day had been appointed.

These provisions are mandatory, but must be read with the provisions relating to Juvenile Courts (now Youth Courts) in mind (ie the Children and Young Persons Act 1933 s 47 (as amended): see *CHILDREN AND YOUNG PERSONS* vol 5(4) (2008 Reissue) PARA 1267), so that a hearing involving a juvenile (youth) must be heard in a Juvenile Court (now Youth Court): see *R v Westminster City Council, ex p L* [1992] 1 All ER 917, [1992] 1 WLR 253, DC (the restriction on access by the public to such a court does not mean that the hearing is not in open court).

The court has the like powers, including the power to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, as if the proceedings were the summary trial of an information against that person: Backing of Warrants (Republic of Ireland) Act 1965 Schedule para 3 (amended by the Criminal Justice and Public Order Act 1994 s 159(1), (5); and the Justices of the Peace Act 1997 Sch 5 para 9).

The statutory provisions relating to the award of costs out of central funds and the granting of legal aid apply in relation to the proceedings as if the person arrested under the warrant were charged with an indictable offence on the prosecution of the constable on whose application the warrant was indorsed and, where the court discharges that person, as if it had determined not to commit for trial: see the Backing of Warrants (Republic of Ireland) Act 1965 Schedule para 4 (amended by the Costs in Criminal Cases Act 1973 s 21(1), Sch 1 para 3; and prospectively amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 16).

The Backing of Warrants (Republic of Ireland) Act 1965 Schedule paras 2-4 apply to proceedings in England or Wales under s 2 (as amended): Schedule para 1. As to proceedings in Northern Ireland see Schedule paras 7-10.

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 Backing of Warrants (Republic of Ireland) Act 1965 s 2(1). As to the magistrates' court's power to remand see PARA 1292 post.

5 Having regard to the words 'if it appears to the court', evidence is not required for the court to consider if there is a correspondence between the Irish offences charged and English offences; the court has only to read the warrant and find what offence is specified in it so that, except for the strictly limited purpose of explaining technical language in the warrant or words which an English court would not understand, no other evidence is admissible to determine 'the offence specified in the warrant': see *Re Gilligan, Re Ellis* [2000] 1 All ER 113, sub nom *R v Governor of Belmarsh Prison, ex p Gilligan, R v Governor of Exeter Prison, ex p Ellis* [1999] 3 WLR 1244, HL (affg *Re Gilligan, R v Crown Court at Woolwich, ex p Gilligan* [1998] 2 All ER 1, DC; *Re Ellis* (27 January 1998, unreported), DC).

6 The words 'correspond with any offence' refer to the ingredients of the offence, and not to its classification as indictable, or summary, or triable either summarily or on indictment. It is irrelevant that the offence charged is, for example, triable only on indictment under Irish law, but under English law is triable either on indictment or summarily: see *Re Arkins* [1966] 3 All ER 651, sub nom *R v Metropolitan Police Comr, ex p Arkins* [1966] 1 WLR 1593, DC. The word 'any' used in connection with the English offence meant that the court was not necessarily looking for an English offence which was identical to the offence specified in the warrant, nor one whose juristic elements were the same, but for a sufficiently serious offence (ie an indictable offence or a summary offence punishable with six months' imprisonment) with which the offence in the warrant would correspond if it had occurred in England: see *Re Gilligan, Re Ellis* [2000] 1 All ER 113, sub nom *R v Governor of Belmarsh Prison, ex p Gilligan, R v Governor of Exeter Prison, ex p Ellis* [1999] 3 WLR 1244, HL (affg *Re Gilligan, R v Crown Court at Woolwich, ex p Gilligan* [1998] 2 All ER 1, DC; *Re Ellis* (27 January 1998, unreported), DC).

7 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2).

8 As to political offences see PARAS 1175 ante, 1294-1295 post.

9 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(a) (amended by the Criminal Justice and Public Order Act 1994 ss 159(1), (3), 168(3), Sch 11).

10 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(b) (amended by the Criminal Jurisdiction Act 1975 s 4(4), Sch 3 para 1).

11 le an extra-territorial offence under the law of the Republic of Ireland as defined in the Criminal Jurisdiction Act 1975 s 3. For the purposes of the Criminal Jurisdiction Act 1975, 'extra-territorial offence under the law of the Republic of Ireland' means any offence under the law of the Republic of Ireland which:

- 1 (1) is committed in Northern Ireland and which is, under the law of Northern Ireland, an offence described in s 1, Sch 1 Pt I (s 3(4)(a)); or
- 2 (2) is committed in Northern Ireland and is an offence under an enactment of the Republic of Ireland corresponding to ss 2 (as amended), 3(1) or (2) (s 3(4)(b)); or
- 3 (3) is aiding, abetting, counselling, procuring or inciting the commission of any such offence (s 3(4)(c)); or
- 4 (4) is attempting or conspiring to commit any such offence (s 3(4)(d)); or
- 5 (5) is doing any act with intent to impede the arrest or prosecution of a person who has committed any such offence, being an offence which if committed in Northern Ireland would be an arrestable offence (s 3(4)(e)).

12 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(c) (added by the Criminal Jurisdiction Act 1975 Sch 3 para 1).

13 le an 'extra-territorial offence' as defined in the Backing of Warrants (Republic of Ireland) Act 1965 s 1(3). 'Extra-territorial offence' means:

- 6 (1) any offence under s 1(1), Sch 1 (s 1(3)(a));
- 7 (2) any offence in the Republic of Ireland under s 2 (as amended) (s 1(3)(b));
- 8 (3) any offence under s 3 (s 1(3)(c));
- 9 (4) any offence defined as an extra-territorial offence by s 6(3) (s 1(3)(d)).

14 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(d) (added by the Criminal Jurisdiction Act 1975 Sch 3 para 1).

15 le a warrant which specifies an offence to which the Suppression of Terrorism Act 1978 s 1 (as amended) applies: see PARA 1295 post.

16 Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(e) (added as a modification to s 2(2) (as amended) by the Suppression of Terrorism Act 1978 s 2(2)). As to the application of head (6) in the text see the Suppression of Terrorism Act 1978 ss 1 (as amended), 2(2); and PARA 1295 post.

17 le the Backing of Warrants (Republic of Ireland) Act 1965 ss 6A, 6B (both as added). As to these specialty provisions see PARAS 1296-1301 post. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

18 See *ibid* s 2(5) (added by the Criminal Justice Act 1993 s 72(1), (2)); and the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, art 3. The Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, applies to warrants indorsed on or after 22 August 1994: see art 1(2). For the position before that date (when specialty protection played no part in surrender to the Republic of Ireland) see *Re McFadden* (8 March 1982) Lexis, Enggen Library, Cases File, DC; *R v Morgan* [1991] RTR 365, CA.

19 *Re Dwyer* (13 April 1970, unreported), DC.

20 *Re Gilligan; Re Ellis* [2000] 1 All ER 113, sub nom *R v Governor of Belmarsh Prison, ex p Gilligan; R v Governor of Exeter Prison, ex p Ellis* [1999] 3 WLR 1244, HL (affg *Re Gilligan, R v Crown Court at Woolwich, ex p Gilligan* [1998] 2 All ER 1, DC; *Re Ellis* (27 January 1998, unreported), DC).

21 Backing of Warrants (Republic of Ireland) Act 1965 s 2(3).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1288-1291 Application for indorsement of warrant ... Proceedings before magistrates' court after arrest

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(3) PROCEDURE AFTER ARREST/1292. Magistrates' court's power to remand.

1292. Magistrates' court's power to remand.

Where a magistrates' court has the power to remand a person¹ the court may (1) remand him in custody, that is to say, commit him for the period of the remand to prison or, in certain cases², to the custody of a constable³; or (2) remand him on bail in accordance with the Bail Act 1976, that is to say, direct him to surrender himself into the custody of the officer in charge of a specified police station at the time to be appointed⁴ by that officer and notified in writing to the person so remanded⁵. Where his release on bail is conditional on his providing one or more surety or sureties and, in accordance with the statutory requirement⁶, the court fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently⁷, the court must in the meantime commit him to the custody of a constable⁸.

During the period between the surrender of a person⁹ and the end of the period of remand, he must be treated as if committed to the custody of a constable, but where it appears to the officer to whom he surrenders that the end of the period of remand will be unexpectedly delayed the officer must grant him bail in accordance with the Bail Act 1976¹⁰ subject to a duty to surrender himself into the custody of the officer in charge of the specified station¹¹ at the time appointed¹² by that officer and notified in writing to him¹³.

If a person fails to surrender, the court by which he was remanded may issue a warrant in the prescribed form¹⁴ for his arrest¹⁵.

A warrant issued as such in any part of the United Kingdom¹⁶ is treated for the purposes of any enactment or rule of law relating to warrants of arrest as if it were a warrant for the arrest of a person charged with an offence committed in that part¹⁷.

1 Ie under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(1) or s 4(3) (as amended): see PARAS 1290-1291 ante.

2 Ie in the case of a remand under *ibid* s 4(3) (as amended): see PARA 1290 ante.

3 *Ibid* s 5(1)(a). In such a case, the clerk of the magistrates' court which ordered the person to be surrendered must deliver or send the warrant of arrest issued by judicial authority in the Republic to the prison governor to whose custody he is committed: see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 4.

4 The time to be appointed for the purposes of the Backing of Warrants (Republic of Ireland) Act 1965 s 5(1) (as amended) by the officer and notified to the person so remanded, must not be more than 24 hours before the time at which it appears to the officer in charge of the police station that the period of remand is likely to end: s 5(2) (amended by the Bail Act 1976 ss 12, 13, Sch 2 para 33).

5 Backing of Warrants (Republic of Ireland) Act 1965 s 5(1)(b) (substituted by the Bail Act 1976 ss 12, 13, Sch 2 para 33). In such a case, the clerk of the magistrates' court which ordered the person to be surrendered must deliver or send the warrant of arrest issued by judicial authority in the Republic to the police officer in charge of the police station specified in the recognisance: see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 4. For the form of warrant of delivery up of a person bailed see r 1, Schedule Form 8; and for the form of warrant of arrest on failure to surrender to bail see Schedule Form 9.

6 Ie in accordance with the Bail Act 1976 s 8(3): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172.

7 Ie in accordance with *ibid* s 8(4), (5), or (6). The Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, make provision relating to the recognisance: see rr 1, 3(1), (2), Schedule Form 7; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172.

8 Backing of Warrants (Republic of Ireland) Act 1965 s 5(1) (amended by the Bail Act 1976 ss 12, 13, Sch 2 para 33). In such a case, the clerk of the magistrates' court which ordered the person to be surrendered must deliver or send the warrant of arrest issued by judicial authority in the Republic to the police officer in charge of the police station specified in the warrant of commitment: see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 4. For the forms of warrant of commitment see r 1, Schedule Forms 4, 5, 6.

9 le where he has been directed to surrender himself into the custody of the officer in charge of a specified police station: see the text and note 4 supra.

10 As to the powers of a police officer to grant bail see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 941 et seq.

11 le the station specified under the Backing of Warrants (Republic of Ireland) Act 1965 s 5(1) (as amended): see the text and note 4 supra.

12 The time to be appointed for the purposes of ibid s 5(3) (as amended) by the officer, and notified to the person so remanded, must not be more than 24 hours before the time at which it appears to the officer in charge of the police station that the period of remand is likely to end: s 5(2), (3) (both amended by the Bail Act 1976 ss 12, 13, Sch 2 para 33).

13 Backing of Warrants (Republic of Ireland) Act 1965 s 5(3) (as amended: see note 12 supra).

14 Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). For the prescribed form for a warrant for arrest see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 1, Schedule.

15 Backing of Warrants (Republic of Ireland) Act 1965 s 5(4) (amended by the Bail Act 1976 ss 12, 13, Sch 2 para 33, Sch 3). On his arrest under the warrant, the Backing of Warrants (Republic of Ireland) Act 1965 s 5(3) (as amended) applies as if he had surrendered to the officer in charge of the police station specified under s 5(1) (as amended), but that officer must not grant him bail as provided by s 5(1) (as amended) unless he is satisfied that it is proper to do so: s 5(4) (as so amended).

16 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

17 Backing of Warrants (Republic of Ireland) Act 1965 s 5(4) (as amended: see note 15 supra).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(3) PROCEDURE AFTER ARREST/1293. Evidence required.

1293. Evidence required.

There should be produced before the court a document purporting to be a warrant issued by a judicial authority¹ in the Republic of Ireland or a copy of a summons issued by, or on behalf of, a court in that country, whichever is appropriate². In the case of a convicted person, there does not have to be separate proof of the fact of a prisoner's conviction in the Republic of Ireland³. Evidence with respect to the laws of the Republic of Ireland may be given by affidavit or other written statement on oath, or by way of a certificate purporting to be issued by or on behalf of the judicial authority in that country by whom a warrant was issued, or by another judicial authority acting for the same area, and certifying that the offence specified in the warrant can be dealt with under the laws of the Republic of Ireland in the manner described in the certificate⁴. A deposition purporting to have been made in the Republic of Ireland, or an affidavit or written statement purporting to have been sworn there, is admissible if verified in the prescribed manner⁵. Apart from the provisions relating to the authentication of documents emanating from the Republic of Ireland, the English law of evidence prevails⁶.

1 For the meaning of 'judicial authority' see PARA 1287 note 1 ante.

2 If verified in the prescribed manner, the document may be taken to be what it purports to be and must be taken to have been duly issued: Backing of Warrants (Republic of Ireland) Act 1965 s 7(a). Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). As to the prescribed manner for verification see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 5.

3 See *R v Governor of Risley Remand Centre, ex p Marks* [1984] Crim LR 238, DC.

4 Backing of Warrants (Republic of Ireland) Act 1965 s 7(b). Such a certificate is sufficient evidence of the matters so certified: s 7(b). See also *Re Hawkins* (5 February 1987) Lexis, Enggen Library, Cases File, (1987) Times, 11 February, DC.

5 Backing of Warrants (Republic of Ireland) Act 1965 s 7(c). As to the prescribed manner see note 2 supra.

6 *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 3 All ER 208 at 214, [1975] 1 WLR 893 at 900-901, DC, per Lord Widgery CJ. As to the law of evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(4) POLITICAL OFFENCES/1294. Offences of a political character.

(4) POLITICAL OFFENCES

1294. Offences of a political character.

An order for the return of the arrested person must not be made if the offence specified in the warrant is of a political character; and if the court is so debarred from making an order, it must order the discharge of the fugitive¹. An offence may be of a political character either because the wrongdoer had some direct ulterior motive of a political kind when he committed the offence, or because the requesting state is anxious to obtain possession of the wrongdoer's person in order to punish him for his politics². The court is further prohibited from making an order for the fugitive's return if there are substantial grounds for believing that, if taken to the Republic of Ireland, he will be prosecuted or detained for another offence, being an offence of a political character³. It is not enough for the protection to operate, for the fugitive to show that, if returned, he is likely to conduct himself in the future so as to bring upon himself prosecution or detention for future political offences⁴.

¹ See the Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(a) (as amended), (3); and PARA 1291 ante.

² *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 3 All ER 208, [1975] 1 WLR 893, DC. As to political offences see PARA 1175 et seq ante.

³ See the Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(b) (as amended), (3); and PARA 1291 ante.

⁴ *Keane v Governor of Brixton Prison* [1972] AC 204, [1971] 1 All ER 1163, HL. See also *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 2 All ER 208, [1975] 1 WLR 893, DC (where the fact that the applicant had been tried for armed robbery in a special court could not of itself be accepted as evidence that the robbery had been of a political character); *Re Dwyer* (13 April 1970, unreported), DC.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(4) POLITICAL OFFENCES/1295. Certain offences not to be regarded as political.

1295. Certain offences not to be regarded as political.

The Republic of Ireland has been designated¹ as a party to the European Convention on the Suppression of Terrorism². The Secretary of State³ has directed⁴ that, for the purposes of the Backing of Warrants (Republic of Ireland) Act 1965 in relation to warrants issued in the Republic of Ireland⁵, certain offences⁶ are not to be regarded as offences of a political character⁷. No proceedings in respect of such offences are to be regarded as a criminal matter of a political character or as criminal proceedings of a political character⁸. Further, for the purposes of the Backing of Warrants (Republic of Ireland) Act 1965, no offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence is to be regarded as an offence of a political character, and no proceedings in respect of such an offence are to be regarded as a criminal matter of a political character⁹.

1 See the Suppression of Terrorism Act 1978 s 8(4); the Suppression of Terrorism Act 1978 (Designation of Countries) Order 1989, SI 1989/2210; and PARA 1161 ante.

2 See the European Convention on the Suppression of Terrorism (Strasbourg, 27 January 1977; TS 93 (1978); Cmnd 7390); and PARA 1161 ante.

3 As to the Secretary of State see PARA 1116 ante.

4 See the Suppression of Terrorism Act 1978 s 1(4) (amended by the Criminal Justice (International Co-operation) Act 1990 s 31(3), Sch 5); and the Suppression of Terrorism Act 1978 (Application of Provisions) (Republic of Ireland) Order 1989, SI 1989/2313. On the revocation of an order (ie an order made under the Suppression of Terrorism Act 1978 s 1(4) (as amended)), s 1(3)(c) (see the text and note 5 infra) ceases to apply to any warrant issued while the order was in force, but this is without prejudice to the validity of anything done while the order was in force: s 1(5).

5 Ie warrants of the kind mentioned in the Backing of Warrants (Republic of Ireland) Act 1965 s 1(1)(a) (see PARA 1287 ante): see the Suppression of Terrorism Act 1978 s 1(3)(c), (4) (amended by the Criminal Justice (International Co-operation) Act 1990 Sch 5); and PARA 1291 ante.

6 Ie any offence of which a person is accused or has been convicted outside the United Kingdom if the act constituting the offence, or the equivalent act, would, if it took place in any part of the United Kingdom or, in the case of an extra-territorial offence, in corresponding circumstances outside the United Kingdom, constitute one of the offences listed in the Suppression of Terrorism Act 1978 s 1(1), Sch 1 (as amended): s 1(1).

The offences listed in Sch 1 (as amended) are: murder; manslaughter or culpable homicide; rape; kidnapping, abduction or plagium; false imprisonment; assault occasioning actual bodily harm or causing injury; wilful fire-raising; an offence under any of the following provisions of the Offences against the Person Act 1861: s 4 (as amended) (soliciting etc to commit murder); s 18 (as amended) (wounding with intent to cause grievous bodily harm); s 20 (as amended) (causing grievous bodily harm); s 21 (as amended) (attempting to choke etc in order to commit or assist in the committing of any indictable offence); s 22 (as amended) (using chloroform etc to commit or assist in the committing of any indictable offence); s 23 (as amended) (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm); s 24 (as amended) (maliciously administering poison etc with intent to injure etc); s 48 (repealed) (rape); an offence under the Sexual Offences Act 1956 s 1 (as substituted) (rape); an offence under the Criminal Justice Act 1988 s 134 (torture); an offence under any of the following provisions of the Offences against the Person Act 1861: s 55 (repealed) (abduction of unmarried girl under 16); s 56 (repealed) (child-stealing or receiving stolen child); an offence under the Sexual Offences Act 1956 s 20 (as amended) (abduction of unmarried girl under 16); an offence under the Taking of Hostages Act 1982; an offence under the Child Abduction Act 1984 s 2 (as amended) (abduction of child by person other than parent etc) or any corresponding provision in force in Northern Ireland; an offence under any of the following provisions of the Offences against the Person Act 1861: s 28 (as amended) (causing bodily injury by gunpowder); s 29 (as amended) (causing gunpowder to explode etc with intent to do grievous bodily harm); s 30 (as amended) (placing gunpowder near a building etc with intent to cause bodily injury); an offence under

any of the following provisions of the Explosive Substances Act 1883: s 2 (as substituted) (causing explosion likely to endanger life or property); s 3 (as substituted and amended) (doing any act with intent to cause such an explosion, conspiring to cause such an explosion, or making or possessing explosive with intent to endanger life or property); an offence under any provision of the Nuclear Material (Offences) Act 1983; the following offences under the Firearms Act 1968: an offence under s 16 (as amended) (possession of firearm with intent to injure); an offence under s 17(1) (use of firearm or imitation firearm to resist arrest) involving the use or attempted use of a firearm within the meaning of s 17; the following offences under the Firearms (Northern Ireland) Order 1981, SI 1981/155 (as amended): an offence under art 17 consisting of a person having in his possession any firearm or ammunition (within the meaning of that article) with intent by means thereof to endanger life, or to enable another person by means thereof to endanger life; an offence under art 18 para 1 (use of firearm or imitation firearm to resist arrest) involving the use or attempted use of a firearm (within the meaning of that article); an offence under the Criminal Damage Act 1971 s 1(2) (destroying or damaging property intending to endanger life or being reckless as to danger to life); an offence under the Criminal Damage (Northern Ireland) Order 1977, SI 1977/426, art 3(2) (destroying or damaging property intending to endanger life or being reckless as to danger to life); an offence under the Aviation Security Act 1982 Pt I (ss 1-8) (as amended) (other than an offence under s 4 or s 7 (as amended)); an offence under the Aviation and Maritime Security Act 1990 s 1; an offence under Pt II (ss 9-17) (as amended) (other than an offence under s 15 (as amended)); an offence under the Channel Tunnel (Security) Order 1994, SI 1994/570, Pt II (arts 4-9); an offence under the Prevention of Terrorism (Temporary Provisions) Act 1989 Pt III (ss 9-13) (as amended); an offence of attempting or conspiring to commit any of the preceding offences: Suppression of Terrorism Act 1978 Schedule (amended by the Aviation Security Act 1982 s 40, Sch 2 para 7; the Taking of Hostages Act 1982 s 3(2); the Child Abduction Act 1984 s 11(4); the Criminal Justice Act 1988 s 22(1), (2), (3)-(5); the Prevention of Terrorism (Temporary Provisions) Act 1989 s 25(1), Sch 8 para 4; the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 6; the Firearms (Northern Ireland) Order 1981, SI 1981/155, art 61(1), Sch 4 para 5; and the Channel Tunnel (Security Order) 1994, SI 1994/570, art 38, Sch 3 para 2). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1063.

7 Suppression of Terrorism Act 1978 s 1(2)(a).

8 Ibid s 1(2)(b).

9 Genocide Act 1969 s 2(2) (amended by the Extradition Act 1989 s 37(1), Sch 2). In respect of proceedings taken against a person by virtue of the Genocide Act 1969 s 2(2) (as amended), it is no objection to such proceedings that, under the law in force at the time when and in the place where the person is alleged to have committed the act of which he is accused or of which he was convicted, he could not have been punished for it: s 2(3). As to genocide see PARA 1160 ante.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1295 Certain offences not to be regarded as political

NOTE 6--The reference to an offence of rape is now to rape under the law of Scotland or Northern Ireland; the reference to an offence under the Sexual Offences Act 1956 s 1 is now to offences under the Sexual Offences Act 2003 ss 1 or 2 (rape, assault by penetration), s 4 ((causing a person to engage in sexual activity without consent), where the activity caused involved penetration within s 4(4)(a)-(d)), ss 5 or 6 (rape of a child under 13, assault of a child under 13 by penetration), s 8 ((causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within s 8(3)(a)-(d) was caused), s 30 ((sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within s 30(3)(a)-(d)), s 31 ((causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within s 31(3)(a)-(d) was caused); reference to an offence under the 1956 Act s 20 is omitted: Suppression of Terrorism Act 1978 Sch 1 (amended by the 2003 Act Sch 6 para 23(2), Sch 7).

Reference to an offence under the Prevention of Terrorism (Temporary Provisions) Act 1989 Pt III (repealed) is now to an offence under any of the Terrorism Act 2000 ss 15-18: 1978 Act Sch 1 (amended by the 2000 Act Sch 15 para 3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1296. Power of the Secretary of State to make specialty provision regarding the delivery of persons to the Republic of Ireland.

(5) SPECIALTY

1296. Power of the Secretary of State to make specialty provision regarding the delivery of persons to the Republic of Ireland.

The Secretary of State¹ may by order² provide that an order for delivery to the Republic of Ireland³ must not be made if it is shown to the satisfaction of the court that no provision is made in the law of the Republic of Ireland, in respect of a person delivered up to the Republic of Ireland by the United Kingdom⁴, corresponding to the specialty provision⁵ made in respect of a person delivered up to the United Kingdom by the Republic of Ireland⁶.

1 As to the Secretary of State see PARA 1116 ante.

2 In exercise of this power the Secretary of State has made the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952: see PARA 1297 post.

The power to make an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(5) (as added) is exercisable by statutory instrument: s 6C(1) (s 6C added by the Criminal Justice Act 1993 s 72(3)). The order is subject to annulment in pursuance of a resolution of either House of Parliament: Backing of Warrants (Republic of Ireland) Act 1965 s 6C(2) (as so added). Any such order may make different provision for different cases, and make such incidental or supplemental provision as the Secretary of State considers appropriate: s 6C(3) (as so added). Any incidental or supplemental provision may, in particular, include provision as to the circumstances in which, and the presumptions which may be applied in considering whether, provision made by the law of the Republic of Ireland is to be treated as corresponding to provision made by or under s 6A or 6B (both as added): s 6C(4)(a) (as so added).

3 I.e. an order under *ibid* s 2(1): see PARA 1291 text and note 4 ante.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 I.e. the provision made by or under the Backing of Warrants (Republic of Ireland) Act 1965 ss 6A, 6B (both as added): see PARAS 1298, 1300 post. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

6 *Ibid* s 2(5) (added by the Criminal Justice Act 1993 s 72(2)); and see PARA 1297 note 6 post.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1297. Surrender to the Republic of Ireland.

1297. Surrender to the Republic of Ireland.

The Secretary of State¹ has by order² provided that an order for delivery to the Republic of Ireland³ must not be made if it is shown to the satisfaction of the court that no provision is made in the law of the Republic of Ireland, in respect of a person delivered up to the Republic of Ireland by the United Kingdom⁴, corresponding to the specialty provision⁵ in respect of a person delivered up to the United Kingdom by the Republic of Ireland⁶. Corresponding specialty provision has been made in the law of the Republic⁷.

1 As to the Secretary of State see PARA 1116 ante.

2 See by the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, made in exercise of the power contained in the Backing of Warrants (Republic of Ireland) Act 1965 s 6A (as added): see PARA 1298 post. The Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, applies where a warrant for the arrest of a person is indorsed on or after 22 August 1994 for execution in a part of the United Kingdom under the Backing of Warrants (Republic of Ireland) Act 1965 s 1 (as amended) or in the Republic of Ireland under corresponding arrangements: Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, art 1(1), (2). The Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, extends to the United Kingdom, the Channel Islands and the Isle of Man: art 1(3). For the purposes of the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, 'United Kingdom' includes the Islands: art 2(1). 'A part of the United Kingdom' includes each of the Islands: art 2(1).

'Corresponding arrangements' means arrangements in force in the Republic of Ireland for the delivery up of a person to the United Kingdom by the Republic of Ireland corresponding to provisions contained in the Backing of Warrants (Republic of Ireland) Act 1965 for the delivery up of a person to the Republic of Ireland by the United Kingdom: Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, art 2(1). Those arrangements are contained in the reciprocal legislation in the Republic of Ireland Extradition Act 1965 (No 17): see PARA 1284 note 2 ante.

3 See an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(1): see PARA 1291 text and note 4 ante.

4 For the meaning of 'United Kingdom' for these purposes see note 2 supra. See also PARA 1101 note 10 ante.

5 See the provision made by the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, arts 4, 5 (see PARAS 1299, 1301 post).

6 Ibid art 3. As to the use of the terms 'speciality' and 'specialty' see PARA 1143 note 3 ante.

7 See the Extradition (Rule of Specialty and Re-Extradition for Purposes of Part III of Extradition Act, 1965) Order 1994, SI 1994/221 (a statutory instrument of the Republic of Ireland).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1297 Surrender to the Republic of Ireland

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1298. Power of the Secretary of State to make specialty provision regarding the delivery of persons to the United Kingdom.

1298. Power of the Secretary of State to make specialty provision regarding the delivery of persons to the United Kingdom.

The Secretary of State¹ may by order² provide that, except in such cases as may be specified in the order³, no person delivered up to the United Kingdom⁴ under corresponding⁵ arrangements in force in the Republic of Ireland ('the defendant'), may be dealt with for, or in respect of, any offence committed before his surrender, other than the offence for which he was delivered up⁶. Any such order may, in particular, specify⁷ the following cases⁸:

- 102 (1) where consent is given by a minister of the Republic⁹;
- 103 (2) where the defendant, having had an opportunity to leave the United Kingdom, has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up¹⁰;
- 104 (3) where the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned to it¹¹;
- 105 (4) where the description of the offence charged in the United Kingdom is altered in the course of proceedings but the offence under its new description is shown by its constituent elements to be an offence for which the defendant could have been delivered up under the corresponding legislation¹².

1 As to the Secretary of State see PARA 1116 ante.

2 In exercise of this power the Secretary of State has made the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952: see PARA 1299 post. The power to make an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 6A (as added) is exercisable by statutory instrument: s 6C(1) (s 6C added by the Criminal Justice Act 1993 s 72(3)). The order is subject to annulment in pursuance of a resolution of either House of Parliament: Backing of Warrants (Republic of Ireland) Act 1965 s 6C(2) (as so added). Any such order may make different provision for different cases, and make such incidental or supplemental provision as the Secretary of State considers appropriate: s 6C(3) (as so added). Any incidental or supplemental provision may, in particular, include provision as to the notification of any consent, and provision as to the drawing up of any document to support a request for consent: s 6C(4)(b) (as so added).

3 See the text and notes 8-12 infra. As to the cases specified in the order see the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952, art 4(2), (3); and PARA 1299 text and notes 9-16 post.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 'Corresponding' means corresponding to provisions contained in the Backing of Warrants (Republic of Ireland) Act 1965: s 6A(2) (s 6A added by the Criminal Justice Act 1993 s 72(3)).

6 Backing of Warrants (Republic of Ireland) Act 1965 s 6A(1) (as added: see note 5 supra); and see PARA 1299 text and note 6 post.

7 le for the purposes of ibid s 6A(1) (as added).

8 Ibid s 6A(3) (as added: see note 5 supra).

9 Ibid s 6A(3)(a) (as added: see note 5 supra); and see PARA 1299 text and note 9 post.

10 Ibid s 6A(3)(b) (as added: see note 5 supra); and see PARA 1299 text and note 11 post.

11 Ibid s 6A(3)(c) (as added: see note 5 supra); and see PARA 1299 text and note 13 post.

12 Ibid s 6A(3)(d) (as added: see note 5 supra); and see PARA 1299 text and note 14 post.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1299. Surrender to the United Kingdom.

1299. Surrender to the United Kingdom.

The Secretary of State¹ has by order² provided that, unless his case is a specified case³, no defendant⁴ may be dealt with in the United Kingdom for, or in respect of, any offence⁵, other than that for which he was delivered up, committed before his surrender⁶. Accordingly, a provision of law for the time being in force in any part of the United Kingdom which would, but for the provisions of the order, require or allow that person to be so dealt with, has no effect in respect of him unless his case is a specified case⁷. A defendant's case is a specified case if:

- 106 (1) the Minister for Justice of the Republic of Ireland has consented⁸ by notice in writing given to the Secretary of State to the defendant being dealt with for, or in respect of, the offence in question⁹; or
- 107 (2) the defendant, having had an opportunity to leave the United Kingdom¹⁰, has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up¹¹; or
- 108 (3) the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned¹² to it¹³; or
- 109 (4) the description of the offence with which the defendant is charged in the United Kingdom is altered in the course of the proceedings but the offence under its new description is shown by its constituent elements to be an offence for which he could have been delivered up under corresponding arrangements¹⁴.

A defendant's case is also a specified case where the offence in question is, under the law for the time being in force in the part of the United Kingdom in which the warrant was issued, an offence of which he could¹⁵, on his trial on a charge for the offence for which he was delivered up, be convicted¹⁶.

1 As to the Secretary of State see PARA 1116 ante.

2 I.e. by the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952 (see the text and notes 3-16 infra) made in exercise of the power contained in the Backing of Warrants (Republic of Ireland) Act 1965 s 6A (as added): see PARA 1298 ante. As to the application of the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, see PARA 1297 note 2 ante.

3 As to specified cases see *ibid* art 4(2), (3); and the text and notes 8-16 infra.

4 For the purposes of the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, 'defendant' means a person delivered up to the United Kingdom under corresponding arrangements: art 2(1). For the meanings of 'United Kingdom' and 'corresponding arrangements' under the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, see PARA 1297 note 2 ante. For the meaning of 'United Kingdom' generally see PARA 1101 note 10 ante.

5 References to a defendant being dealt with for, or in respect of, an offence include a reference to his being dealt with by being proceeded against, sentenced, detained with a view to carrying out a sentence or detention order or otherwise restricted in his personal freedom for or in respect of an offence; and 'detention order' means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence: *ibid* art 2(2).

6 *Ibid* art 4(1).

7 *Ibid* art 4(1).

8 Where any consent is notified in accordance with an order under the Backing of Warrants (Republic of Ireland) Act 1965 ss 6A, 6B (both as added): (1) judicial notice must be taken of that consent; and (2) a certificate of the Secretary of State to the effect that consent was given in accordance with the provisions is to be evidence without further proof: s 6C(5) (s 6C added by the Criminal Justice Act 1993 s 72(3)).

9 Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, art 4(2)(a).

10 A defendant is not to be regarded as having had an opportunity to leave the United Kingdom at any time whilst he was on bail granted to him in any part of the United Kingdom: *ibid* art 2(3). For the meaning of 'a part of the United Kingdom' see *PARA 1297* note 2 *ante*

11 *Ibid* art 4(2)(b).

12 A defendant is not to be regarded as having returned to any part of the United Kingdom at any time whilst he was on bail granted to him in any part of the United Kingdom: *ibid* art 2(3).

13 *Ibid* art 4(2)(c).

14 *Ibid* art 4(2)(d).

15 *Ie* disregarding the provisions of *ibid* art 4(1): see the text and notes 6-7 *supra*.

16 *Ibid* art 4(3).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see *PARA 1401 et seq.*

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1300. Power of the Secretary of State to make specialty provision regarding the delivery up of persons to territories other than the Republic of Ireland.

1300. Power of the Secretary of State to make specialty provision regarding the delivery up of persons to territories other than the Republic of Ireland.

The Secretary of State¹ may by order² provide that, except in such cases as may be specified in the order³, no person delivered up to the United Kingdom⁴ under corresponding⁵ arrangements in force in the Republic of Ireland ('the defendant') may be delivered up to a territory other than the Republic of Ireland to be dealt with for, or in respect of, any offence committed before his surrender to the United Kingdom⁶. Any such order may, in particular, specify⁷ the following cases:

- 110 (1) where consent is given by a minister of the Republic⁸;
- 111 (2) where the defendant, having had an opportunity to leave the United Kingdom, has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up⁹;
- 112 (3) where the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned to it¹⁰.

1 As to the Secretary of State see PARA 1116 ante.

2 In exercise of this power the Secretary of State has made the Backing of Warrants (Republic of Ireland) (Rule of Specialty) Order 1994, SI 1994/1952: see PARA 1301 post. The power to make an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 6B (as added) is exercisable by statutory instrument: s 6C(1) (s 6C added by the Criminal Justice Act 1993 s 72(3)). The order is subject to annulment in pursuance of a resolution of either House of Parliament: Backing of Warrants (Republic of Ireland) Act 1965 s 6C(2) (as so added). Any such order may make different provision for different cases, and make such incidental or supplemental provision as the Secretary of State considers appropriate: s 6C(3) (as so added). Any incidental or supplemental provision may, in particular, include provision as to the notification of any consent, and provision as to the drawing up of any document to support a request for consent: s 6C(4)(b) (as so added).

3 See the text and notes 8-10 infra. As to the cases specified in the order see *ibid* art 5(2); and PARA 1301 text and notes 8-11 post.

4 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

5 'Corresponding' means corresponding to provisions contained in the Backing of Warrants (Republic of Ireland) Act 1965: s 6B(2) (s 6B added by the Criminal Justice Act 1993 s 72(3)).

6 Backing of Warrants (Republic of Ireland) Act 1965 s 6B(1) (as added: see note 5 supra); and see PARA 1301 note 6 post.

7 *Ie* for the purposes of *ibid* s 6B(1) (as added).

8 *Ibid* s 6B(3)(a) (as added: see note 5 supra); and see PARA 1301 note 8 post.

9 *Ibid* s 6B(3)(b) (as added: see note 5 supra); and see PARA 1301 note 10 post.

10 *Ibid* s 6B(3)(c) (as added: see note 5 supra); and see PARA 1301 note 11 post.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(5) SPECIALTY/1301. Extradition to third country.

1301. Extradition to third country.

The Secretary of State¹ has, by order², provided that, unless his case is a specified case³, no defendant⁴ may be delivered up to a territory other than the Republic of Ireland to be dealt with for, or in respect of, any offence⁵ committed before his surrender to the United Kingdom⁶. A defendant's case is a specified case if:

- 113 (1) the Minister for Justice of the Republic of Ireland has consented⁷ by notice in writing given to the Secretary of State to the defendant being so delivered up⁸;
- 114 (2) the defendant, having had the opportunity to leave the United Kingdom⁹ has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up¹⁰; or
- 115 (3) the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned to it¹¹.

1 As to the Secretary of State see PARA 1116 ante.

2 Order by the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952 (see the text and notes 3-11 infra), made in exercise of the power contained in the Backing of Warrants (Republic of Ireland) Act 1965 s 6B (as added): see PARA 1300 ante. As to the application of the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, see PARA 1297 note 2 ante.

3 As to specified cases see *ibid* art 5(2); and the text and notes 8-11 infra.

4 For the meaning of 'defendant' see PARA 1299 note 4 ante. For the meanings of 'United Kingdom' and 'corresponding arrangements' under the Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, see PARA 1297 note 2 ante. For the meaning of 'United Kingdom' generally see PARA 1101 note 10 ante.

5 As to references to a defendant being dealt with for, or in respect of, an offence see PARA 1299 note 5 ante.

6 Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, art 5(1).

7 As to the consent of the Minister for Justice of the Republic of Ireland see PARA 1299 note 8 ante.

8 Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order 1994, SI 1994/1952, art 5(2)(a).

9 A defendant is not to be regarded as having had an opportunity to leave the United Kingdom at any time whilst he was on bail granted to him in any part of the United Kingdom: *ibid* art 2(3).

10 *Ibid* art 5(2)(b).

11 *Ibid* art 5(2)(c). A defendant is not to be regarded as having returned to any part of the United Kingdom at any time whilst he was on bail granted to him in any part of the United Kingdom: art 2(3).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(6) HIGH COURT PROCEEDINGS/1302. Statement of case by court.

(6) HIGH COURT PROCEEDINGS

1302. Statement of case by court.

If the court refuses to make an order for delivery to the Republic of Ireland¹ in relation to a person, the chief officer of police for the area of the force to which the constable making an application² belongs or, if the application is made in Northern Ireland, the chief constable of the Royal Ulster Constabulary, may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved³. If the chief officer or chief constable immediately informs the court that he intends to make such an application, the court must make an order providing for the detention of the person in question, or directing that he must not be released except on bail⁴.

Rules of court may specify: (1) a period within which the chief officer or chief constable must make such an application unless the court grants a longer period⁵; and (2) a period within which the court must comply with such an application⁶. Where the court fails to comply with an application to state a case⁷ within the period specified in the rules of court, the High Court may, on the application of the chief officer or chief constable, make an order requiring the court to state a case⁸. The High Court has the power: (a) to remit the case to the magistrates' court to decide it according to the opinion of the High Court on the question of law⁹; or (b) to dismiss the appeal¹⁰. An appeal from the High Court is to the House of Lords¹¹. Leave to appeal from the High Court or the House of Lords is required, but there is no need for certification by the High Court of a point of law of general public importance¹². The House of Lords may exercise certain powers of the High Court¹³.

1 le an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2 (as amended): see PARA 1291 ante.

2 le an application under *ibid* s 1 (as amended): see PARAS 1287-1288 ante.

3 *Ibid* s 2A(1) (s 2A added by the Criminal Justice Act 1988 s 1(9), Sch 1 Pt II para 5). The Backing of Warrants (Republic of Ireland) Act 1965 s 2A (as added) continues to have effect notwithstanding the repeal of the Criminal Justice Act 1988 s 1(9), Sch 1: Extradition Act 1989 s 37(5).

4 Backing of Warrants (Republic of Ireland) Act 1965 s 2A(2) (as added: see note 3 *supra*). The clerk of the magistrates' court must send a copy of the order to the Crown office: see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 3(3) (added by SI 1989/1596). An order made by a court in England and Wales or Northern Ireland under the Backing of Warrants (Republic of Ireland) Act 1965 s 2A(2) (as added) ceases to have effect if: (1) the High Court dismisses the appeal; and (2) the chief officer or chief constable does not immediately either apply for leave to appeal to the House of Lords or inform the court that he intends to apply for leave: s 2A(6) (as so added). Subject to s 2A(6) (as added), an order under s 2A(2) (as added) has effect so long as the case is pending: s 2A(10) (as so added). A case is pending (unless proceedings are discontinued) until, disregarding any power of a court to grant leave to take any step out of time, there is no step that the chief officer or chief constable can take: s 2A(11) (as so added).

5 *Ibid* s 2A(3)(a) (as added: see note 3 *supra*).

6 *Ibid* s 2A(3)(b) (as added: see note 3 *supra*). Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). Where a court refuses to make an order in relation to a person under the Backing of Warrants (Republic of

Ireland) Act 1965 s 2 (as amended), any application to the court under s 2A(1) (as added) to state a case for the opinion of the High Court on any question of law arising in the proceedings must be made to the court by the chief officer of police within the period of 21 days following the day on which the order was refused, unless the court grants a longer period within which the application has to be made: Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 5A(1) (rr 5A, 5B both added by SI 1989/1596). Such an application must be made in writing and must identify the question or questions of law on which the opinion of the High Court is sought: Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 5A(2) (as so added). Within 21 days after receipt of an application to state a case under the Backing of Warrants (Republic of Ireland) Act 1965 s 2A(1) (as added), the clerk to the justices must send a draft case to the applicant or his solicitor and to the person to whom the warrant relates or his solicitor and must allow each party 21 days within which to make representations thereon; within 21 days after the latest day on which such representations may be made the court must, after considering such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case which the clerk must forthwith send to the applicant or his solicitor: Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, r 5B (as so added).

7 le under the Backing of Warrants (Republic of Ireland) Act 1965 s 2A(1) (as added): see the text and note 3 supra.

8 Ibid s 2A(4) (as added: see note 3 supra).

9 Ibid s 2A(5)(a) (as added: see note 3 supra).

10 Ibid s 2A(5)(b) (as added: see note 3 supra).

11 See the Administration of Justice Act 1960 s 1(1)(a) (as amended) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247); and the Judicature (Northern Ireland) Act 1978 s 41(1). See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 84. As to appeals to the House of Lords see PARA 1259 et seq ante. As to appeals from the High Court to the House of Lords in criminal matters generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2020 et seq.

12 See the Administration of Justice Act 1960 s 1(2); the Backing of Warrants (Republic of Ireland) Act 1965 s 2A(8) (as added: see note 3 supra); and the Judicature (Northern Ireland) Act 1978 s 41(2).

13 The House of Lords may exercise any powers of the High Court under the Backing of Warrants (Republic of Ireland) Act 1965 s 2A(5) (as added); and s 2A(6) (as added) applies to the House of Lords as it applies to the High Court: s 2A(9) (as added: see note 3 supra).

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(6) HIGH COURT PROCEEDINGS/1303. Habeas corpus.

1303. Habeas corpus.

Where an order is made by a magistrates' court¹ for delivery up of a person to the Republic of Ireland²:

- 116 (1) the person must not be delivered up under the order until the expiration of the period of 15 days, beginning with the date on which the order is made, unless he gives notice in the prescribed manner³ that he consents to his earlier removal⁴;
- 117 (2) if within the period of 15 days an application is made by him or on his behalf for a writ of habeas corpus ad subjiciendum, he must not be so delivered up while proceedings on the application are pending⁵.

The magistrates' court must inform him that he will not be delivered up under the order during the period of 15 days (unless he gives notice in the prescribed manner that he consents to his earlier removal)⁶ and also that he has the right to apply for a writ of habeas corpus ad subjiciendum⁷. An application for a writ of habeas corpus is made to the High Court⁸. Appeal lies to the House of Lords with the leave of the High Court or the House of Lords⁹.

1 le an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(1): see PARA 1291 text and note 4 ante.

2 Ibid s 3(1).

3 Matters falling to be prescribed under the Backing of Warrants (Republic of Ireland) Act 1965 are prescribed by rules made under the Justices of the Peace Act 1949 s 15 (repealed: see now the Magistrates Courts Act 1980 s 144; and MAGISTRATES vol 29(2) (Reissue) PARA 588): see the Backing of Warrants (Republic of Ireland) Act 1965 s 8(1), (2) (amended by the Statute Law (Repeals) Act 1986; and the Magistrates Courts (Northern Ireland) Order 1981, SI 1981/1675, art 170(2), Sch 6 Pt I para 11). As to the prescribed manner for the notice of consent for earlier return under the Backing of Warrants (Republic of Ireland) Act 1965 s 3(1)(a) see the Magistrates' Courts (Backing of Warrants) Rules 1965, SI 1965/1906, rr 1, 2, Schedule Form 2.

4 Backing of Warrants (Republic of Ireland) Act 1965 s 3(1)(a).

5 Ibid s 3(1)(b). Proceedings on an application for a writ of habeas corpus ad subjiciendum are to be treated as pending until any appeal in those proceedings is disposed of; and an appeal is to be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if not brought or made within that time: s 3(3).

6 See ibid s 3(1)(a); and note 3 supra.

7 Ibid s 3(1).

8 See PARA 1217 et seq ante; ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 230 et seq. In practice, the respondents to the application will be the keeper of the body (the governor of the prison service institution or the chief officer of the relevant police force, depending on where the person is being held) and the Republic of Ireland. The Secretary of State for the Home Department is not a respondent. As to the Secretary of State see PARA 1116 ante.

9 See the Administration of Justice Act 1960 ss 1(1)(a) (as amended), (2), 15(3) (as amended); ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 247; and JUDICIAL REVIEW vol 61 (2010) PARA 679. As to appeals to the House of Lords see PARA 1259 et seq ante. As to habeas corpus in the context of extradition see PARA 1217 et seq ante. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1531.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(6) HIGH COURT PROCEEDINGS/1304. High Court's consideration of habeas corpus applications.

1304. High Court's consideration of habeas corpus applications.

Since, in making an order for delivery of the person to the Republic of Ireland¹, the magistrates' court is not concerned to determine whether there is a *prima facie* case against the person², the court hearing an application for a writ of habeas corpus is usually primarily concerned with whether any of the restrictions on surrender have been made out by the applicant³. It has been held that no fresh evidence is to be admitted on certain applications for a writ of habeas corpus⁴. The magistrates' court has no jurisdiction to entertain submissions about abuse of process, and the High Court will not entertain such submissions on an application for a writ of habeas corpus⁵. The High Court does, however, have an inherent jurisdiction and duty to ensure that the request by the Republic of Ireland for surrender of a person is made for a bona fide purpose and that there is no ulterior motive⁶. An order for delivery up of a person to the Republic of Ireland is not contrary to the freedom of movement guaranteed to European Union nationals by European Community law⁷.

1 le an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(1): see PARA 1291 text and note 4 ante

2 See PARA 1286 ante.

3 See PARA 1222 ante. As to the proceedings before magistrates' court after arrest see PARA 1291 ante.

4 *Re Nobbs* [1978] 3 All ER 390, [1978] 1 WLR 1302, DC; *Re Conlon* (2 March 1995) Lexis, Enggen Library, Cases File, DC (both cases considering whether the offences in the warrants were offences of a political character: see the Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(a) (as amended); and PARA 1291 note 9 ante). Fresh evidence in such a case was admitted by the High Court in *Re Dwyer* (13 April 1970, unreported), DC. Fresh evidence on an application for habeas corpus was admitted where the restriction concerned was that in the Backing of Warrants (Republic of Ireland) Act 1965 s 2(2)(b) (see PARA 1291 text and note 10 ante): see *R v Brixton Prison Governor, ex p Keane* [1970] 3 All ER 741, [1971] 2 WLR 194, DC; affd sub nom *Keane v Governor of Brixton Prison* [1972] AC 204, [1971] 1 All ER 1163, HL.

5 *Re Gilligan, Re Ellis* [2000] 1 All ER 113, sub nom *R v Governor of Belmarsh Prison, ex p Gilligan, R v Governor of Exeter Prison, ex p Ellis* [1999] 3 WLR 1244, HL (affg *Re Gilligan, R v Crown Court at Woolwich, ex p Gilligan* [1998] 2 All ER 1, DC; *Re Ellis* (27 January 1998, unreported), DC).

6 *Re Lawlor* (1977) 66 Cr App Rep 75, DC.

7 *R v Governor of Pentonville Prison, ex p Healy* [1984] 3 CMLR 575, 128 S 498, DC.

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/10. CASES UNDER THE BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965/(6) HIGH COURT PROCEEDINGS/1305. Statutory discharge.

1305. Statutory discharge.

If a person, in respect of whom an order has been made by a magistrates' court for delivery up to the Republic of Ireland¹, is not delivered up under the order within one month after it was made, a Superior Court² exercising jurisdiction in the part of the United Kingdom³ within which it was made, upon application by or on behalf of that person, may⁴, unless reasonable cause is shown for the delay, order him to be discharged⁵.

1 Ie an order under the Backing of Warrants (Republic of Ireland) Act 1965 s 2(1): see PARA 1291 text and note 4 ante

2 For these purposes, 'Superior Court' means the High Court, or the High Court of Northern Ireland: *ibid* s 6(1).

3 For the meaning of 'United Kingdom' see PARA 1101 note 10 ante.

4 The word 'may' gives to the High Court a normal discretionary power, but that power is qualified by the indication that, in certain circumstances (ie where reasonable cause is shown for the delay), the jurisdiction must be exercised in one way (ie the court may not order discharge). In other cases, the court may or may not order discharge, as it considers appropriate: *Re Lindley* (29 October 1997) Lexis, Enggen Library, Cases File, DC.

5 Backing of Warrants (Republic of Ireland) Act 1965 s 6(1). If, in the case of a person in respect of whom an order has been made under s 2(1) (see PARA 1291 ante), it appears to a justice of the peace acting for the same area as that of the court by which the order was made, that for any reason the police force of the Republic of Ireland no longer requires the delivery of that person into its custody, he must order him to be discharged: s 6(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1401. Extradition to category 1 territories

11. EXTRADITION TO CATEGORY 1 TERRITORIES

UPDATE

1284-1305 Cases under the Backing of Warrants (Republic of Ireland) Act 1965

The Extradition Act 1989 and the Backing of Warrants (Republic of Ireland) Act 1965 are replaced by the Extradition Act 2003: see PARA 1401 et seq.

1401. Extradition to category 1 territories

The Extradition Act 2003 Part 1¹ deals with extradition from the United Kingdom to the territories designated for such purposes by order made by the Secretary of State². References to category 1 territories are to the territories so designated for these purposes³. A territory may not be designated as a category 1 territory if a person found guilty in the territory of a criminal offence may be sentenced to death for the offence under the general criminal law of the territory⁴.

¹ See the Extradition Act 2003 Pt 1 (ss 1-68A).

² Ibid s 1(1). The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003, SI 2003/3333 (amended by SI 2004/1898, SI 2005/365, SI 2005/2036, SI 2007/2238) sets out the territories designated for these purposes.

³ 2003 Act ss 1(2), 216(1). A territory may be designated by being named in an order made by the Secretary of State or by falling within a description set out in such an order made under the 2003 Act: s 223(8). It is one thing to designate a member state in category 1 as and when the European arrest warrant regime is adopted there; it is quite another to respond to the other state's partial withdrawal with a similar approach: *R (on the application of Oliver) v Secretary of State for the Home Department* [2006] EWHC 1847 (Admin), [2006] All ER (D) 459 (Jul), DC.

⁴ 2003 Act s 1(3). Section 1 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of a 'Part 1 warrant' see the 2003 Act ss 2, 216(4); and PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1402. Part 1 warrant and certificate

1402. Part 1 warrant and certificate

The following provision applies if the designated authority¹ receives a Part 1 warrant in respect of a person². A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory³ and which contains the specified statements and information⁴.

The designated authority may issue a certificate under this provision if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory⁵. Such a certificate must certify that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory⁶.

1 The designated authority is the authority designated for the purposes of the Extradition Act 2003 Pt 1 (ss 1-68A) by order made by the Secretary of State: s 2(9). An order made under s 2(9) may designate more than one authority or designate different authorities for different parts of the United Kingdom: s 2(10). In exercise of these powers, the Secretary of State has made the Extradition Act 2003 (Part 1 Designated Authorities) Order 2003, SI 2003/3109 (amended by SI 2006/594), which designates both the Serious Organised Crime Agency and the Crown Agent of the Crown Office in Scotland as designated authorities.

2 2003 Act s 2(1).

3 For the meaning of a 'category 1 territory' see PARA 1401.

4 2003 Act s 2(2). The specified statements and information are either the statement referred to in s 2(3) and the information referred to in s 2(4), or the statement referred to in s 2(5) (amended by the Police and Justice Act 2006 s 42, Sch 13 para 1) and the information referred to in the 2003 Act s 2(6): s 2(2). The s 2(3) statement is one that the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence. See *Asztalos v Szekszard City Court, Hungary* [2010] EWHC 237 (Admin), [2010] All ER (D) 133 (Feb), DC. The information required by s 2(4) is: (1) particulars of the person's identity; (2) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence; (3) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence; (4) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it. The reference to 'any other warrant' in head (2) is a reference to any domestic warrant on which the European arrest warrant is based, and not to any other European arrest warrant that might have been issued on the basis of such a domestic warrant: *Louca v Public Prosecutor, Bielefeld, Germany* [2009] UKSC 4, [2009] 1 WLR 2550, [2009] All ER (D) 203 (Nov) [2009] UKSC 4, [2009] 1 WLR 2550, [2009] All ER (D) 203 (Nov). The particulars must be presented clearly: *Von der Pahlen v Loeben High Court* [2006] All ER (D) 310 (Jun), DC. It is not necessary to include earlier versions of warrants or warrants unconnected to the offence in question: *Ruiz v Central Court of Criminal Proceedings No 5 of the National Court, Madrid* [2007] EWHC 2983 (Admin), [2008] 1 WLR 2798, [2007] All ER (D) 211 (Dec). The s 2(5) statement is one that the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence. It is enough that it can be inferred from the statement as a whole that the person is unlawfully at large: *Kuprevicius v Government of Lithuania* [2006] All ER (D) 265 (May), DC. The information required by s 2(6) is: (a) particulars of the person's identity; (b) particulars of the conviction; (c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence; (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence; (e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence. The court must recognise as the judicial authority any body which has been appointed as such by the requesting state: *Enander v Governor of Her Majesty's Prison Brixton* [2006] 1 CMLR 999, DC. Ordinarily, statements in a European arrest warrant by a foreign judge must be taken as accurately describing the procedures under the system of law he is appointed to administer: *Caldarelli v Court of Naples* [2008] UKHL 51, [2009] 1 All ER 1. Section 2(6) head (c) does not

require the same level of detail in respect of the underlying charges as s 2(4) head (c): *Sandi v Craiova Court, Romania* [2009] EWHC 3079 (Admin), [2009] All ER (D) 297 (Nov). See also *Wiercinski v 2nd Division of the Criminal Circuit in Olsztyn, Poland* [2008] All ER (D) 74 (Jan); *Pietrzak v Regional Court in Wloclawek, Poland* [2008] EWHC 2138 (Admin), [2009] 1 WLR 866, [2008] All ER (D) 149 (Jun).

Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is either the imprisoning territory or the convicting territory, the Extradition Act 2003 s 2(2) has effect as if the reference to the statement referred to in s 2(5) (as amended) were a reference to the statement referred to in s 63(2): see s 63(1)-(3). Further, where s 63 applies, if the category 1 territory is the imprisoning territory, s 2(6)(e) (see head (e) above) has effect as if 'the category 1 territory' read 'the convicting territory': see s 63(4)(a).

5 Ibid s 2(7).

6 Ibid s 2(8). Section 2 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1403. Arrest under certified Part 1 warrant

1403. Arrest under certified Part 1 warrant

If a certificate is issued¹ in respect of a Part 1 warrant² issued in respect of a person, the warrant may be executed by a constable or a customs officer³ in any part of the United Kingdom⁴. The warrant may be executed by a service policeman⁵ anywhere, but only if the person is subject to service law or is a civilian subject to service discipline⁶. The warrant may be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest⁷.

1 Ie under the Extradition Act 2003 s 2: see PARA 1402.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 A 'customs officer' is a person commissioned by the Commissioners of Customs and Excise under the Customs and Excise Management Act 1979 s 6(3) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 903); Extradition Act 2003 s 216(8).

4 Ibid s 3(1), (2).

5 'Service policeman' means anyone who is, or by reason of the Armed Forces Act 2006 s 375(5) (see ARMED FORCES) is to be treated as, a service policeman for the purposes of that Act): 2003 Act s 216(13) (definition substituted by the Armed Forces Act 2006 Sch 16 para 205(b)).

6 2003 Act s 3(3) (substituted for s 3(3), (4) by the Armed Forces Act 2006 Sch 16 para 200). 'Subject to service law' and 'civilian subject to service discipline' have the same meaning as in the Armed Forces Act 2006 (see ARMED FORCES): 2003 Act s 216(7A), (13A) (added by the Armed Forces Act 2006 Sch 16 para 205).

7 Extradition Act 2003 s 3(5). Section 3 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1404. Person arrested under Part 1 warrant

1404. Person arrested under Part 1 warrant

If a person is arrested under a Part 1 warrant¹, a copy of the warrant must be given to the person as soon as practicable after his arrest². The person must be brought as soon as practicable before the appropriate judge³. A person arrested under the warrant must be treated as continuing in legal custody until he is brought before the appropriate judge⁴ or he is discharged⁵.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 Extradition Act 2003 s 4(1), (2). If s 4(2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge: s 4(4).

3 Ibid s 4(3). If s 4(3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge: s 4(5). The 'appropriate judge' is, in England and Wales, a District Judge (Magistrates' Courts) designated for these purposes by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor: s 67(1)(a) (amended by Constitutional Reform Act 2005 Sch 4 para 353(2)). The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 67(1)(a): s 67(5) (added by 2005 Act Sch 4 para 353(4)). A designation under the 2003 Act s 67(1) may be made for all cases or for such cases, or cases of such description, as the designation stipulates, and more than one designation may be made: s 67(1), (2). See *Nikonovs v Governor of Brixton Prison* [2005] EWHC 2405 (Admin), [2006] 1 All ER 927, DC.

4 Ie under the 2003 Act s 4(3).

5 Ibid s 4(6). The reference to being discharged is to being discharged under s 4(4), (5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1405. Provisional arrest

1405. Provisional arrest

A constable, a customs officer¹ or a service policeman² may arrest a person without a warrant if he has reasonable grounds for believing that a Part 1 warrant³ has been or will be issued in respect of the person by an authority of a category 1 territory⁴, and that the authority has the function of issuing arrest warrants in that territory⁵. If a person is so arrested, within the required period⁶, the person must be brought before the appropriate judge⁷ and certain documents⁸ must be produced to the judge⁹. The documents are a Part 1 warrant in respect of the person, and a certificate¹⁰ in respect of the warrant¹¹. A copy of the warrant must be given to the person as soon as practicable after his arrest¹². The person must be treated as continuing in legal custody until he is brought before the appropriate judge¹³ or he is discharged¹⁴. If a person is arrested¹⁵ on the basis of a belief that a Part 1 warrant has been or will be issued in respect of him, and the person is discharged¹⁶, the person must not be arrested again¹⁷ on the basis of a belief relating to the same Part 1 warrant¹⁸.

1 For the meaning of 'customs officer' see PARA 1403 NOTE 4.

2 For the meaning of 'service policeman' see PARA 1403 NOTE 5.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 For the meaning of 'category 1 territory' see PARA 1401.

5 Extradition Act 2003 s 5(1). A constable or a customs officer may arrest a person under s 5(1) in any part of the United Kingdom: s 5(2). A service policeman may arrest a person under s 5(1) only if the person is subject to service law or is a civilian subject to service discipline: s 5(3) (s 5(3), (4) substituted for s 5(3)-(5) by the Armed Forces Act 2006 Sch 16 para 201). If a service policeman has power to arrest a person under the 2003 Act s 5(1) he may exercise the power anywhere: s 5(4). 'Subject to service law' and 'civilian subject to service discipline' have the same meaning as in the Armed Forces Act 2006 (see ARMED FORCES): 2003 Act s 216(7A), (13A) (added by the Armed Forces Act 2006 Sch 16 para 205). The 2003 Act s 5 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

6 The required period is 48 hours starting with the time when the person is arrested: 2003 Act s 6(3).

7 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

8 Ie the documents specified in the 2003 Act s 6(4).

9 Ibid s 6(1), (2). If s 6(2) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge: s 6(6).

10 Ie under ibid s 2: see PARA 1402.

11 Ibid s 6(4).

12 Ibid s 6(5). If s 6(5) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge: s 6(7).

13 Ie brought before the judge under ibid s 6(2).

14 Ibid s 6(8). The reference to being discharged is to being discharged under s 6(6), (7).

15 Ie under ibid s 5.

16 Ie under ibid s 6(6), (7).

17 le under ibid s 5.

18 Ibid s 6(10).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1406. Extradition offences: person not sentenced for offence

1406. Extradition offences: person not sentenced for offence

The following provision applies in relation to conduct of a person if he is accused in a category 1 territory¹ of the commission of an offence² constituted by the conduct, or he is alleged to be unlawfully at large after conviction by a court in a category 1 territory of an offence constituted by the conduct and he has not been sentenced for the offence³. The conduct constitutes an extradition offence in relation to the category 1 territory if (1) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom⁴, a certificate issued by an appropriate authority of the category 1 territory⁵ shows that the conduct falls within the European framework list⁶, and the certificate shows that the conduct is punishable under the law of the category 1 territory⁷ with imprisonment or another form of detention for a term of three years or a greater punishment⁸; (2) the conduct occurs in the category 1 territory⁹, the conduct would constitute an offence under the law of the relevant part of the United Kingdom¹⁰ if it occurred in that part of the United Kingdom¹¹, and the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment, however it is described in that law¹²; (3) the conduct occurs outside the category 1 territory¹³, the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment, however it is described in that law¹⁴, and in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment¹⁵; (4) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom¹⁶, the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom¹⁷, and the conduct is so punishable under the law of the category 1 territory, however it is described in that law¹⁸; or (5) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom¹⁹, the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment, however it is described in that law²⁰, and the conduct constitutes an offence²¹, or if committed in the United Kingdom would constitute such an offence²².

1 For the meaning of 'category 1 territory' see PARA 1401.

2 The offences are (1) an offence under the International Criminal Court Act 2001 s 51 or 58 (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454); (2) an offence under the 2001 Act s 52 or 59 (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 455); and (3) an ancillary offence, as defined in s 55 or 62 in relation to an offence falling within heads (1) and (2): Extradition Act 2003 s 64(7)(a)-(c).

3 Ibid s 64(1). A person is alleged to be unlawfully at large after conviction of an offence if he is alleged to have been convicted of it, and his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence: s 68A(1) (added by Police and Justice Act 2006 Sch 3 para 2(2)).

4 2003 Act s 64(2)(a).

5 An 'appropriate authority of a category 1 territory' is a judicial authority of the territory which the appropriate judge believes has the function of issuing arrest warrants in that territory: ibid s 66(1), (2). For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

6 2003 Act s 64(2)(b). The European framework list is the list of conduct set out in Sch 2: s 215(1). The certificate may be contained in the warrant itself: *Dabas v High Court of Justice, Madrid* [2007] UKHL 6, [2007] 2 AC 31, [2007] 2 All ER 641.

As to reciprocity between member states see *R (on the application of Oliver) v Secretary of State for the Home Department* [2006] EWHC 1847 (Admin), [2006] All ER (D) 459 (Jul), DC (spirit or philosophy underlying principle of mutual recognition in context of European arrest warrant regime is not to promote retaliatory responses but to keep regime in being and respond to lapses or legal difficulties in fellow member states by co-operative discussions). The European Council has a discretion to give preference to a legal instrument of a framework decision, rather than of a Convention, in a case where conditions governing the adoption of such a measure were satisfied, for example, the Framework Decision on European Arrest Warrants and surrender procedures between member states of the European Union: Case C-303/05 *Advocaten voor de Wereld VZW v Leden van de Ministerraad* [2008] All ER (EC) 317, [2007] 3 CMLR 1, ECJ. See also Case C-123/08 *Criminal proceedings concerning Wolzenberg* [2010] All ER (EC) 127, ECJ.

7 The law of a territory is the general criminal law of the territory: 2003 Act s 66(1), (3).

8 *Ibid* s 64(2)(c). The court is not concerned to assess the quality or sufficiency of the evidence in support of the conduct alleged but to see if the description of such conduct is fair and accurate: *Palar v Court of First Instance of Brussels* [2005] All ER (D) 185 (Apr), DC. It is for the trial court in the requesting state to consider misconduct or bad faith by its police in the investigation of the case or the preparation of evidence for trial; their existence cannot amount to an abuse of the extradition process of the requested state: *Symeou v Public Prosecutor's Office at the Court of Appeals, Patras, Greece* [2009] EWHC 897 (Admin), [2009] All ER (D) 13 (May), DC.

9 2003 Act s 64(3)(a).

10 The relevant part of the United Kingdom is the part of the United Kingdom in which the relevant proceedings are taking place: *ibid* s 66(1), (4). The relevant proceedings are the proceedings in which it is necessary to decide whether conduct constitutes an extradition offence: s 66(1), (5).

11 *Ibid* s 64(3)(b). See *Asztalos v Szekszard City Court, Hungary* [2010] EWHC 237 (Admin), [2010] All ER (D) 133 (Feb), DC. For the purposes of s 64(3)(b), (4)(c), (5)(b) if the conduct relates to a tax or duty, it is immaterial that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the category 1 territory, and, if the conduct relates to customs or exchange, it is immaterial that the law of the relevant part of the United Kingdom does not contain rules of the same kind as those of the law of the category 1 territory: s 64(8).

12 *Ibid* s 64(3)(c).

13 *Ibid* s 64(4)(a).

14 *Ibid* s 64(4)(b).

15 *Ibid* s 64(4)(c); and see NOTE 11.

16 *Ibid* s 64(5)(a). As to the excision of non-United Kingdom conduct see *Osunta v Public Prosecutor's Office, Dusseldorf* [2007] EWHC 1562 (Admin), [2008] 3 WLR 26, [2007] All ER (D) 26 (Jul).

17 2003 Act s 64(5)(b); and see NOTE 11.

18 *Ibid* s 64(5)(c).

19 *Ibid* s 64(6)(a).

20 *Ibid* s 64(6)(b).

21 *Ie* an offence mentioned in *ibid* s 64(7).

22 *Ibid* s 64(6)(c). Sections 64, 66 are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1407. Extradition offences: person sentenced for offence

1407. Extradition offences: person sentenced for offence

The following provision applies in relation to conduct of a person if he is alleged to be unlawfully at large after conviction by a court in a category 1 territory¹ of an offence² constituted by the conduct, and he has been sentenced for the offence³. The conduct⁴ constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied: (1) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom⁵; (2) a certificate issued by an appropriate authority of the category 1 territory⁶ shows that the conduct falls within the European framework list⁷; and (3) the certificate shows that a sentence of imprisonment or another form of detention for a term of 12 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct⁸. The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied: (a) the conduct occurs in the category 1 territory⁹; (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom¹⁰ if it occurred in that part of the United Kingdom¹¹; and (c) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 1 territory in respect of the conduct¹². The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied (i) the conduct occurs outside the category 1 territory¹³; (ii) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 1 territory in respect of the conduct¹⁴; and (iii) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment¹⁵. The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied: (A) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom¹⁶; (B) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom¹⁷; and (C) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 1 territory in respect of the conduct¹⁸. The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied: (i) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom¹⁹; (ii) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 1 territory in respect of the conduct²⁰; and (iii) the conduct constitutes an offence²¹, or if committed in the United Kingdom would constitute such an offence²².

1 For the meaning of 'category 1 territory' see PARA 1401.

2 The offences are (1) an offence under the International Criminal Court Act 2001 ss 51, 58 (genocide, crimes against humanity and war crimes) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454); (2) an offence under the 2001 Act ss 52, 59 (conduct ancillary to genocide etc committed outside the jurisdiction) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 455); and (3) an ancillary offence, as defined in ss 55 or 62 in relation to an offence falling within heads (1) and (2): Extradition Act 2003 s 65(7)(a)-(c).

3 Ibid s 65(1). As to the modification of this provision in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

4 The words 'the conduct' in ibid s 65(2)-(6) should be interpreted as meaning 'such of the conduct as constitutes a criminal offence (under the law of the category 1 territory)' rather than 'all the conduct': *Office of*

the King's Prosecutor, Brussels v Cando Armas [2005] UKHL 67, [2006] 2 AC 1. For the meaning of 'unlawfully at large' see PARA 1406. See also *Hewitt v First Instance and Magistrates' Court Number One of Denia, Spain*; *Woodward v First Instance and Magistrates' Court Number One of Denia, Spain* [2009] All ER (D) 234 (Apr).

5 2003 Act s 65(2)(a). As to the modification of s 65(2) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

6 For the meaning of 'an appropriate authority of the category 1 territory' see PARA 1406 NOTE 5.

7 2003 Act s 65(2)(b). The European framework list is the list of conduct set out in Sch 2: s 215(1).

8 *Ibid* s 65(2)(c).

9 *Ibid* s 65(3)(a). As to the modification of s 65(3) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

10 For the meaning of 'the relevant part of the United Kingdom' for these purposes see PARA 1406 NOTE 10.

11 2003 Act s 65(3)(b). For the purposes of s 65(3)(b), (4)(c), (5)(b), if the conduct relates to a tax or duty, it is immaterial that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the category 1 territory, and, if the conduct relates to customs or exchange, it is immaterial that the law of the relevant part of the United Kingdom does not contain rules of the same kind as those of the law of the category 1 territory: s 65(8). For the meaning of 'the law of a territory' see PARA 1406 NOTE 7. As to the modification of s 65(8) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

12 *Ibid* s 65(3)(c). Where a person to be extradited has been convicted of several offences and an aggregated sentence is imposed on him, the aggregated sentence must be for at least four months: *Pilecki v Circuit Court of Legnica, Poland* [2008] UKHL 7, [2008] 4 All ER 445. Where an aggregated sentence of more than four months is imposed but not all of the offences are extradition offences, it is not possible to determine whether the sentence is greater than four months for the purposes of the 2003 Act s 65(3)(c): *Wiercinski v 2nd Division of the Criminal Circuit in Olsztyn, Poland* [2008] All ER (D) 74 (Jan). If the sentence imposed fulfills the condition in the 2003 Act s 65(3)(c) and the offence satisfies the requirements for an extradition offence, then it follows that an arrest warrant issued is valid: *Kucera v District Court of Karvina, Czech Republic* [2008] EWHC 414 (Admin), [2008] 4 All ER 80, DC.

13 2003 Act s 65(4)(a). As to the modification of s 65(4) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

14 *Ibid* s 65(4)(b).

15 *Ibid* s 65(4)(c); and see NOTE 10.

16 *Ibid* s 65(5)(a). As to the modification of s 65(5) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

17 *Ibid* s 65(5)(b); and see NOTE 10.

18 *Ibid* s 65(5)(c).

19 *Ibid* s 65(6)(a). As to the modification of s 65(6) in relation to persons serving sentences outside the territory where they were convicted, see NOTE 21 below.

20 *Ibid* s 65(6)(b).

21 *Ie* an offence mentioned in *ibid* s 65(7).

22 *Ibid* s 65(6)(c). Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is the imprisoning territory: (1) s 65(1) above has effect as if 'a category 1 territory' read 'the convicting territory'; (2) s 65(2) above has effect as if 'the category 1 territory' in the opening words and in s 65(2)(a), (c) read 'the convicting territory' and as if 'the category 1 territory' in s 65(2)(b) read 'the imprisoning territory'; (3) s 65(3)-(6), (8) above have effect as if 'the category 1 territory' in each place read 'the convicting territory': see s 63(1), (2), (4)(f)-(h).

Section 65 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1408. Identity of person arrested

1408. Identity of person arrested

If a person arrested under a Part 1 warrant¹ is brought before the appropriate judge², or a person is provisionally arrested³ and the procedural provisions⁴ are complied with in relation to him, the judge must first decide whether the person brought before him is the person in respect of whom the warrant⁵ was issued⁶. The judge must decide the above question on a balance of probabilities⁷. If the judge decides that the person is not the person in respect of whom the warrant was issued, he must order the person's discharge⁸. If the judge decides that the person is the person in respect of whom the warrant was issued, then he must proceed accordingly⁹.

In England and Wales, the judge has the same powers, as nearly as may be, as a magistrates' court would have if the proceedings were the summary trial of an information against the person¹⁰. If the judge exercises his power to adjourn the proceedings he must remand the person in custody or on bail¹¹. If the person is remanded in custody, the appropriate judge may later grant bail¹².

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie brought before the appropriate judge under the Extradition Act 2003 s 4(3): see PARA 1404. For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

3 Ie under *ibid* s 5: see PARA 1405.

4 Ie *ibid* s 6(2): see PARA 1405.

5 Ie the Part 1 warrant referred to in *ibid* s 7(1), or the warrant referred to in s 6(4) (see PARA 1405).

6 *Ibid* s 7(1), (2). The question of identity falls to be resolved at the initial hearing, not at the extradition hearing: *Nur v Van Der Valk* [2005] EWHC 1874 (Admin), [2005] All ER (D) 48 (Aug). There is no right of appeal against a decision under the 2003 Act s 7(2) the appropriate route for challenging the original decision would be by way of judicial review: *Hilali v Central Court of Criminal Proceedings No 5 of the National Court, Madrid* [2006] EWHC 1239 (Admin), [2006] 4 All ER 435, DC.

7 See 2003 Act s 7(3).

8 *Ibid* s 7(4).

9 *Ibid* s 7(5). The judge must proceed under s 8: see PARA 1409.

10 *Ibid* s 7(6).

11 *Ibid* s 7(9).

12 *Ibid* s 7(10) (amended by the Police and Justice Act 2006 Sch 13 para 16). The 2003 Act s 7 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1409. Remand etc

1409. Remand etc

If the judge is required to proceed with the initial hearing he must: (1) fix a date¹ on which the extradition hearing² is to begin³; (2) inform the person of the contents of the Part 1 warrant⁴; (3) give the person the required information about consent⁵; (4) remand the person in custody or on bail⁶.

If the person is remanded in custody, the appropriate judge may later grant bail⁷. If the extradition hearing does not begin on or before the date fixed under this provision, and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay⁸. If no application is made under the above provision the judge must order the person's discharge on the first occasion after the date fixed under this provision when the person appears or is brought before the judge, unless reasonable cause is shown for the delay⁹.

1 The date fixed under the Extradition Act 2003 s 8(1) must not be later than the end of the permitted period, which is 21 days starting with the date of the arrest referred to in s 7(1)(a) or (b) (see PARA 1408): 2003 Act s 8(4). If before the date fixed under s 8(1) (or s 8(5)) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and s 8(5) may apply more than once: s 8(5).

2 The 'extradition hearing' is the hearing at which the appropriate judge is to decide whether a person in respect of whom a Part 1 warrant was issued is to be extradited to the category 1 territory in which it was issued: *ibid* s 68(1). For the meaning of 'appropriate judge' see PARA 1404 NOTE 3. For the meaning of 'Part 1 warrant' see PARA 1402. For the meaning of 'category 1 territory' see PARA 1401. Section 68 applies for the purposes of the Extradition Act 2003 Pt 1 (ss 1-68A): s 68(2).

3 *Ibid* s 8(1)(a).

4 *Ibid* s 8(1)(b).

5 *Ibid* s 8(1)(c). The required information about consent is: (a) that the person may consent to his extradition to the category 1 territory in which the Part 1 warrant was issued; (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; and (c) that consent must be given before the judge and is irrevocable: s 8(3).

6 *Ibid* s 8(1)(d).

7 *Ibid* s 8(2) (amended by the Police and Justice Act 2006 Sch 13 para 16).

8 2003 Act s 8(6), (7). See *Kozluk v Circuit Court in Lubin, Poland* [2009] All ER (D) 02 (Dec), DC.

9 *Ibid* s 8(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1410. Judges powers at extradition hearing

1410. Judges powers at extradition hearing

At the extradition hearing¹ the appropriate judge² has the same powers, as nearly as may be, as a magistrates' court would have if the proceedings were the summary trial of an information against the person in respect of whom the Part 1 warrant³ was issued⁴. If the judge adjourns the extradition hearing he must remand the person in custody or on bail⁵. If the person is remanded in custody, the appropriate judge may later grant bail⁶.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 Extradition Act 2003 s 9(1).

5 Ibid s 9(4).

6 Ibid s 9(5) (amended by the Police and Justice Act 2006 Sch 13 para 16). The 2003 Act s 9 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1411. Initial stage of extradition hearing

1411. Initial stage of extradition hearing

The following provision applies if a person in respect of whom a Part 1 warrant¹ is issued appears or is brought before the appropriate judge² for the extradition hearing³. The judge must decide whether the offence specified in the Part 1 warrant is an extradition offence⁴. If the judge decides that it is not, he must order the person's discharge⁵. If the judge decides that it is an extradition offence, he must proceed accordingly⁶.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

3 Extradition Act 2003 s 10(1). For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

4 Ibid s 10(2). For the meaning of 'extradition offence' see PARAS 1406, 1407. Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is the imprisoning territory, s 10(2) has effect as if 'an extradition offence' read 'an extradition offence in relation to the convicting territory': see s 63(1), (2), (4)(b).

5 See the 2003 Act s 10(3).

6 See ibid s 10(4). If the judge decides that the offence is an extradition offence he must proceed under s 11: see PARA 1412. Section 10(2)-(4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1412. Bars to extradition

1412. Bars to extradition

If the judge is required to proceed with the hearing, he must decide whether the person's extradition to the category 1 territory¹ is barred by reason of:

- (1) the rule against double jeopardy²;
- (2) extraneous considerations³;
- (3) the passage of time⁴;
- (4) the person's age⁵;
- (5) hostage-taking considerations⁶;
- (6) speciality⁷;
- (7) the person's earlier extradition to the United Kingdom from another category 1 territory⁸;
- (8) the person's earlier extradition to the United Kingdom from a non-category 1 territory⁹;
- (9) the person's earlier transfer to the United Kingdom by the International Criminal Court¹⁰.

If the judge decides that any of the above bars apply, he must order the person's discharge¹¹. If the judge decides that none of the statutory bars apply, and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed, following the procedure for cases where the person has been convicted¹². If the judge decides that none of the bars apply, and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed to consider whether the person's extradition would be compatible with his human rights¹³.

1 For the meaning of 'category 1 territory' see PARA 1401.

2 Extradition Act 2003 s 11(1)(a). A person's extradition to a category 1 territory is barred by reason of the rule against double jeopardy if, and only if, it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction, and that the person were charged with the extradition offence in that part of the United Kingdom: ss 11(2), 12. For the meaning of 'extradition offence' see PARAS 1406, 1407. Unless both sets of proceedings under consideration are criminal, double jeopardy is not available as a plea in bar: *R v K* [2007] EWCA Crim 971, [2007] 2 Cr App Rep 187.

3 2003 Act s 11(1)(b). A person's extradition to a category 1 territory is barred by reason of extraneous considerations if, and only if, it appears that (1) the Part 1 warrant issued in respect of him, though purporting to be issued on account of the extradition offence, is in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions; or (2) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions: ss 11(2) 13. For the meaning of 'Part 1 warrant' see PARA 1402.

4 *Ibid* s 11(1)(c). A person's extradition to a category 1 territory is barred by reason of the passage of time if, and only if, it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have committed the extradition offence, where he is accused of its commission, or become unlawfully at large, where he is alleged to have been convicted of it: ss 11(2), 14 (s 14 as amended by the Police and Justice Act 2006 Sch 13 para 2(1)). There is no discretion under these provisions: *Kociukow v District Court of Bialystok III Penal Division* [2006] EWHC 56 (Admin), [2006] 2 All ER 451, DC. See *R (on the application of Slator) v Bow Street Magistrates' Court* [2006] EWHC 2628 (Admin), [2006] All ER (D) 33 (Oct), DC (irrational to grant application for extradition where convicted person had more than three years left to serve). An overall judgment on the merits is required,

unshackled by rules with too sharp edges: *La Torre v Italy* [2007] EWHC 1370 (Admin), [2007] All ER (D) 217 (Jun), DC. See also *Government of Croatia v Spanovic* [2007] EWHC 1770 (Admin), [2007] All ER (D) 443 (Jul), DC. The fact that a person has fled from the requesting state does not disentitle him from relying on s 14: *Davis v Court of Instruction No 2 Benidorm* [2008] EWHC 853 (Admin), [2008] 1 WLR 2593, [2008] All ER (D) 23 (Feb), DC.

5 2003 Act s 11(1)(d). A person's extradition to a category 1 territory is barred by reason of his age if, and only if, it would be conclusively presumed because of his age that he could not be guilty of the extradition offence on the assumption (1) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction; (2) that the person carried out the conduct when the extradition offence was committed, or alleged to be committed; (3) that the person carried out the conduct in the part of the United Kingdom where the judge exercises jurisdiction: ss 11(2), 15.

6 *Ibid* s 11(1)(e). A person's extradition to a category 1 territory is barred by reason of hostage-taking considerations if, and only if, the territory is a party to the Hostage-taking Convention and it appears that if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and the act or omission constituting the extradition offence also constitutes an offence under the Taking of Hostages Act 1982 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 468) or an attempt to commit such an offence: 2003 Act ss 11(2), 16(1). The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979: s 16(4). The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him: s 16(2). A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of s 16(1): s 16(3).

7 *Ibid* s 11(1)(f). A person's extradition to a category 1 territory is barred by reason of speciality if, and only if, there are no speciality arrangements with the category 1 territory: ss 11(2), 17(1). There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if the offence is one falling within s 17(3), or the condition in s 17(4) is satisfied: s 17(2). The offences are: (1) the offence in respect of which the person is extradited; (2) an extradition offence disclosed by the same facts as that offence; (3) an extradition offence in respect of which the appropriate judge gives his consent under s 55 (see PARA 1443) to the person being dealt with; (4) an offence which is not punishable with imprisonment or another form of detention; (5) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal; (6) an offence in respect of which the person waives the right that he would have, but for this provision, not to be dealt with for the offence: s 17(3).

For the meaning of 'appropriate judge' see PARA 1404 NOTE 3. The condition is that the person is given an opportunity to leave the category 1 territory and he does not do so before the end of the permitted period, or if he does so before the end of the permitted period, he returns there: s 17(4). The permitted period is 45 days starting with the day on which the person arrives in the category 1 territory: s 17(5). Arrangements made with a category 1 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally: s 17(6). A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 1 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters: s 17(7).

8 *Ibid* s 11(1)(g). A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from another category 1 territory if, and only if (1) the person was extradited to the United Kingdom from another category 1 territory (the 'extraditing territory'); (2) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration; (3) that consent has not been given on behalf of the extraditing territory: ss 11(2), 18.

9 *Ibid* s 11(1)(h). A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from a non-category 1 territory if, and only if, (1) the person was extradited to the United Kingdom from a territory that is not a category 1 territory (the 'extraditing territory'); (2) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's being dealt with in the United Kingdom in respect of the extradition offence under consideration; (3) consent has not been given on behalf of the extraditing territory to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration: *ibid* ss 11(2), 19.

10 *Ibid* s 11(1)(i) (added by the Police and Justice Act 2006 Sch 13 para 3(1)). A person's extradition to a category 1 territory is barred by reason of his earlier transfer by the International Criminal Court if, and only if, (1) the person was transferred to the United Kingdom to serve a sentence imposed by the Court; (2) under arrangements between the United Kingdom and the Court, the consent of the Presidency of the Court is required to the person's extradition from the United Kingdom to the category 1 territory in respect of the

extradition offence under consideration; (3) that consent has not been given: 2003 Act ss 11(2), 19A (s 19A added by the 2006 Act Sch 13 para 3(2)).

11 See 2003 Act s 11(3).

12 See *ibid* s 11(4). The procedure where a person has been convicted is set out in s 20: see PARA 1413. For the meaning of 'unlawfully at large' see PARA 1406.

13 See *ibid* s 11(5). As to the consideration of a person's human rights see s 21; and PARA 1414. Section 11(3)-(5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. The 2003 Act ss 12-19 are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1413. Case where person has been convicted

1413. Case where person has been convicted

If the judge is required to proceed under this provision¹ he must decide whether the person was convicted in his presence². If the person was convicted in his presence the judge must proceed with the extradition hearing³. If the person was convicted in his absence, the judge must then decide whether the person deliberately absented himself from his trial⁴. If the judge decides that the person did deliberately absent himself he must proceed with the extradition hearing⁵. If the judge decides that the person did not deliberately absent himself, he must decide whether the person would be entitled to a retrial or, on appeal, to a review amounting to a retrial⁶. If the person would be entitled to such a retrial, the judge must proceed with the extradition hearing⁷. If he would not, the judge must order the person's discharge⁸.

1 Ie by virtue of the Extradition Act 2003 s 11: see PARA 1412.

2 Ibid s 20(1). It is only when the step-by-step exercise (under Pt 1 (ss 1-68A) takes the district judge to s 20 that he is required to consider whether the person has been convicted in his presence, whether he has deliberately absented himself from his trial, and whether he is entitled either to a retrial or, on appeal, a review amounting to a retrial: *Sonea v Mehedinti District Court, Romania* [2009] EWHC 89 (Admin), [2009] 2 All ER 821, DC.

3 See 2003 Act s 20(2). The judge must then proceed with the extradition hearing under s 21: see PARA 1414.

4 See ibid s 20(3). 'Trial' meant the legal process whereby guilt or innocence was to be decided, and which process resulted in a final determination; if there was a possibility of an appeal against an acquittal, there was no finality and the trial process would not be at an end: *Atkinson v Supreme Court of Cyprus* [2009] EWHC 1579 (Admin), [2010] 1 WLR 570, [2009] All ER (D) 183 (Jun), DC.

5 See 2003 Act s 20(4); and NOTE 3. Section 20(1)-(4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. See *Mariotti v Italy* [2005] EWHC 2745 (Admin), (2006) Times, 13 January; *Re Migliorelli* [2006] All ER (D) 365 (Feb), DC.

6 2003 Act s 20(5). Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is the imprisoning territory, s 20(5) has effect as if after 'entitled' there were inserted 'in the convicting territory': see s 63(1), (2), (4)(c).

7 See ibid s 20(6); and NOTE 3. The judge must not decide that a person would be entitled to a retrial unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights: (1) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required; (2) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him: s 20(8).

8 Ibid s 20(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1414. Human rights

1414. Human rights

If the judge is required to proceed with the extradition hearing¹ he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998². If the judge decides that the person's extradition would not be compatible with those rights, he must order the person's discharge³. If the person's extradition would be compatible with those rights, the judge must order the person to be extradited to the category 1 territory⁴ in which the warrant was issued⁵. If the judge makes an order under the above provision he must remand the person in custody or on bail to wait for his extradition to the category 1 territory⁶. If the person is remanded in custody, the appropriate judge may later grant bail⁷.

1 Ie by virtue of the Extradition Act 2003 s 11 (see PARA 1412) or s 20 (see PARA 1413).

2 Ibid s 21(1). 'Convention rights' is defined by the Human Rights Act 1998 s 1(1). See *Jansons v Riga District Court, Latvia* [2009] All ER (D) 192 (Mar) (where extradition might cause person to commit suicide, right not to be subjected to torture or inhuman or degrading treatment). See also PARA 1269.

3 2003 Act s 21(2).

4 For the meaning of 'category 1 territory' see PARA 1401.

5 2003 Act s 21(3). The Extradition Act 2003 s 21(1)-(3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

6 2003 Act s 21(4).

7 Ibid s 21(5) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1415. Person charged with offence in United Kingdom

1415. Person charged with offence in United Kingdom

The following provision applies if at any time in the extradition hearing¹ the judge is informed that the person in respect of whom the Part 1 warrant² is issued is charged with an offence in the United Kingdom³. The judge must adjourn the extradition hearing until: (1) the charge is disposed of⁴; (2) the charge is withdrawn⁵; (3) proceedings in respect of the charge are discontinued⁶; (4) an order is made for the charge to lie on the file⁷.

If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served⁸.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 Extradition Act 2003 s 22(1).

4 Ibid s 22(2)(a). A charge against a person is disposed of if: (1) the person is acquitted in respect of it, when he is acquitted; (2) if the person is convicted in respect of it, when there is no further possibility of an appeal against the conviction: s 214(1). There is no further possibility of an appeal against a conviction: (a) when the period permitted for giving notice of application for leave to appeal to the Court of Appeal against the conviction ends, if the leave of the Court of Appeal is required and no such notice is given before the end of that period; (b) when the Court of Appeal refuses leave to appeal against the conviction, if the leave of the Court of Appeal is required and notice of application for leave is given before the end of that period; (c) when the period permitted for giving notice of appeal to the Court of Appeal against the conviction ends, if notice is not given before the end of that period; (d) when the decision of the Court of Appeal on an appeal becomes final, if there is no appeal to the Supreme Court against that decision; (e) when the decision of the Supreme Court on an appeal is made, if there is such an appeal: s 214(2) (amended as from 1 October 2009 (see SI 2009/1604) by Constitutional Reform Act 2005 Sch 9 para 81). The decision of the Court of Appeal on an appeal becomes final: (i) when the period permitted for applying to the Court of Appeal for leave to appeal to the Supreme Court ends, if there is no such application; (ii) when the period permitted for applying to the Supreme Court for leave to appeal to it ends, if the Court of Appeal refuses leave to appeal and there is no application to the Supreme Court for leave to appeal; (iii) when the Supreme Court refuses leave to appeal to it; (iv) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court is granted, if no such appeal is brought before the end of that period: 2003 Act s 214(3) (as amended). For these purposes any power of a court to extend the period permitted for giving notice of appeal or of application for leave to appeal or for applying for leave to appeal, and any power of a court to grant leave to take a step out of time, must be ignored: s 214(4).

5 Ibid s 22(2)(b).

6 Ibid s 22(2)(c).

7 Ibid s 22(2)(d). If, before he adjourns the extradition hearing under s 22(2), the judge has decided under s 11 (see PARA 1412) whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing: s 22(4). As to the rule against double jeopardy see PARA 1412 NOTE 2.

8 Ibid s 22(3). Section 22 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1416. Person serving sentence in United Kingdom

1416. Person serving sentence in United Kingdom

If at any time in the extradition hearing¹ the judge is informed that the person in respect of whom the Part 1 warrant² is issued is serving a sentence of imprisonment or another form of detention in the United Kingdom, the judge may adjourn the extradition hearing until the sentence has been served³.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 Extradition Act 2003 s 23(1), (2). The Act does not give a judge the authority to interrupt a custodial sentence: *Handa v High Instance Court of Paris; R (on the application of Handa) v Bow Street Magistrates' Court* (2004) Times, 6 January, DC (decision not to adjourn extradition hearing of person serving custodial sentence was irrational). In a case where an extradition hearing is adjourned under the 2003 Act s 23(2) the Magistrates' Courts Act 1980 s 131 (see MAGISTRATES vol 29(2) (Reissue) PARA 716) has effect as if a reference to 28 clear days were a reference to six months: 2003 Act s 23(3)(a) (added by the Police and Justice Act 2006 Sch 13 para 7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1417. Extradition request

1417. Extradition request

If at any time in the extradition hearing¹ the judge is informed that (1) a certificate has been issued² in respect of a request for the person's extradition; (2) the request has not been disposed of³; and (3) an order has been made⁴ for further proceedings on the warrant to be deferred until the request has been disposed of, the judge must remand the person in custody or on bail⁵. If the person is remanded in custody, the appropriate judge may later grant bail⁶.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 *Ie* under the Extradition Act 2003 s 70: see PARA 1448.

3 A request for a person's extradition is disposed of: (1) when an order is made for the person's discharge in respect of the request and there is no further possibility of an appeal; (2) when the person is taken to be discharged in respect of the request; (3) when an order is made for the person's extradition in pursuance of the request and there is no further possibility of an appeal: s 213(2). There is no further possibility of an appeal against an order for a person's discharge or extradition: (a) when the period permitted for giving notice of an appeal to the High Court ends, if notice is not given before the end of that period; (b) when the decision of the High Court on an appeal becomes final, if there is no appeal to the Supreme Court against that decision; (c) when the decision of the Supreme Court on an appeal is made, if there is such an appeal: s 213(3) (s 213(3), (4) amended as from 1 October 2009 (see SI 2009/1604) by Constitutional Reform Act 2005 Sch 9 para 81). The decision of the High Court on an appeal becomes final: (i) when the period permitted for applying to the High Court for leave to appeal to the Supreme Court ends, if there is no such application; (ii) when the period permitted for applying to the Supreme Court for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the Supreme Court for leave to appeal; (iii) when the Supreme Court refuses leave to appeal to it; (iv) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court is granted, if no such appeal is brought before the end of that period: 2003 Act s 213(4) (as so amended). For the purposes of s 213(3), (4) any power of a court to extend the period permitted for giving notice of appeal or for applying for leave to appeal, and any power of a court to grant leave to take a step out of time must be ignored: s 213(5). This is intended to ensure that the warrant cannot be resurrected by any exercise of the court's power to extend the time limits: *District Court of Vilnius City v Barcys* [2007] EWHC 615 (Admin), [2008] 1 All ER 733, [2007] 1 WLR 3249, DC.

4 *Ie* under the 2003 Act s 179(2): see PARA 1539.

5 *Ibid* s 24(1), (2).

6 *Ibid* s 24(3) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1418. Physical or mental condition

1418. Physical or mental condition

If at any time in the extradition hearing¹ it appears to the judge that the physical or mental condition of the person in respect of whom the Part 1 warrant² is issued is such that it would be unjust or oppressive to extradite him, the judge must order the person's discharge, or adjourn the extradition hearing until it appears to him that the above condition is no longer satisfied³.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 Extradition Act 2003 s 25. See *Jansons v Riga District Court, Latvia* [2009] All ER (D) 192 (Mar); and PARA 1414 NOTE 2.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1419. Appeal against extradition order; court's powers on appeal

1419. Appeal against extradition order; court's powers on appeal

If the appropriate judge¹ orders a person's extradition², the person may appeal to the High Court against the order³. Such an appeal may be brought on a question of law or fact⁴. On the appeal the High Court may either allow or dismiss the appeal⁵. The court may allow the appeal only if certain conditions⁶ are satisfied⁷. The conditions are that (1) the appropriate judge ought to have decided a question before him at the extradition hearing⁸ differently, and if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge⁹; or (2) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing, the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently, and if he had decided the question in that way, he would have been required to order the person's discharge¹⁰. If the court allows the appeal it must order the person's discharge, or quash the order for his extradition¹¹.

1 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 Ie under the Extradition Act 2003 Pt 1 (ss 1-68A).

3 Ibid s 26(1). But s 26(1) does not apply if the order is made under s 46 (see PARA 1434) or 48 (see PARA 1436): s 26(2).

Section 26(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 26(3). Notice of an appeal under s 26 must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order is made: s 26(4). An order made after normal business hours is not deemed to be made on the next business day: *R (on the application of Amoako) v DPP* [2006] EWHC 1572 (Admin), [2006] 4 All ER 230.

5 2003 Act s 27(1).

6 Ie the conditions set out in ibid s 27(3), (4).

7 Ibid s 27(2).

8 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

9 2003 Act s 27(3).

10 Ibid s 27(4). As to the approach the court should take where the appellant makes allegations of professional negligence against his legal advisers see *Sondy v CPS* [2010] All ER (D) 41 (Jan), DC. See also *Boudhiba v Central Examining Court No 5 of the National Court of Justice Madrid Spain* [2006] EWHC 167 (Admin), [2006] 3 All ER 574, DC; and *Miklis v Deputy Prosecutor General of Lithuania* [2006] EWHC 1032 (Admin), [2006] All ER (D) 146 (May).

11 2003 Act s 27(5). Section 27(5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1420. Appeal against discharge at extradition hearing; court's powers on appeal

1420. Appeal against discharge at extradition hearing; court's powers on appeal

If the judge orders a person's discharge at the extradition hearing¹ the authority which issued the Part 1 warrant² may appeal to the High Court against the relevant decision³. An appeal under this provision may be brought on a question of law or fact⁴. On such an appeal the High Court may allow or dismiss the appeal⁵. The court may allow the appeal only if certain conditions⁶ are satisfied⁷. The conditions are that: (1) the judge ought to have decided the relevant question⁸ differently, and if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge⁹; or (2) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing, the issue or evidence would have resulted in the judge deciding the relevant question differently, and if he had decided the question in that way, he would not have been required to order the person's discharge¹⁰. If the court allows the appeal it must: (a) quash the order discharging the person; (b) remit the case to the judge; (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing¹¹. If the court allows the appeal it must remand the person in custody or on bail¹². If the court remands the person in custody it may later grant bail¹³.

1 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 Extradition Act 2003 s 28(1). The relevant decision is the decision which resulted in the order for the person's discharge (s 28(3)) but s 28(1) does not apply if the order for the person's discharge was under s 41 (see PARA 1429) (s 28(2)).

Section 28(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

4 2003 Act s 28(4). Notice of an appeal under s 28 must be given in accordance with rules of court before the end of the permitted period, which is seven days starting with the day on which the order for the person's discharge is made: s 28(5). The effect of s 213 (see PARA 1417) is that, once the seven-day period has passed, there is no extant warrant justifying the continuation of proceedings and the continued detention of the person arrested: *District Court of Vilnius City v Barcys* [2007] EWHC 615 (Admin), [2008] 1 All ER 733, [2007] 1 WLR 3249, DC.

5 2003 Act s 29(1).

6 Ie the conditions in *ibid* s 29(3), (4).

7 *Ibid* s 29(2).

8 A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge: *ibid* s 29(6).

9 *Ibid* s 29(3).

10 *Ibid* s 29(4). See *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324.

11 2003 Act s 29(5). Section 29(5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

12 2003 Act s 29(7) (s 29(7), (8) added by the Police and Justice Act 2006 Sch 13 para 8(1)).

13 2003 Act s 29(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1421. Detention pending conclusion of appeal

1421. Detention pending conclusion of appeal

If, immediately after the judge orders the person's discharge, the judge is informed by the authority which issued the Part 1 warrant¹ that it intends to appeal², the judge must remand the person in custody or on bail while the appeal is pending³. If the person is remanded in custody, the appropriate judge may later grant bail⁴.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 le under the Extradition Act 2003 s 28: see PARA 1420.

3 2003 Act s 30(1), (2). An appeal under s 28 ceases to be pending at the earliest of these times: (1) when the proceedings on the appeal are discontinued; (2) when the High Court allows the appeal, or dismisses the appeal, unless, where the appeal is dismissed, the authority immediately informs the court that it intends to apply for leave to appeal to the Supreme Court; (3) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court against the decision of the High Court on the appeal is granted, if no appeal to the Supreme Court is brought before the end of that period; (4) when there is no further step that can be taken by the authority which issued the Part 1 warrant in relation to the appeal, ignoring any power of a court to grant leave to take a step out of time: s 30(4) (amended as from 1 October 2009 (see SI 2009/1604) by Constitutional Reform Act 2005 Sch 9 para 81(4), amended by Police and Justice Act 2003 Sch 13 para 8(2)(a), (b)).

2003 Act 30(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

4 2003 Act s 30(3) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1422. Appeal to High Court: time limit for start of hearing

1422. Appeal to High Court: time limit for start of hearing

Rules of court must prescribe the period (the 'relevant period') within which the High Court must begin to hear an appeal¹. Rules of court must provide for the relevant period to start with the date on which the person in respect of whom a Part 1 warrant² is issued was either provisionally arrested³, if he was so arrested, or was arrested under the Part 1 warrant, if he was not so arrested⁴. The High Court must begin to hear the appeal before the end of the relevant period⁵. The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this provision may apply more than once⁶.

1 Extradition Act 2003 s 31(1). The reference to an appeal is to an appeal under s 26 (see PARA 1419) or 28 (see PARA 1420).

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 He was arrested under the Extradition Act 2003 s 5: see PARA 1405.

4 Ibid s 31(2).

5 Ibid s 31(3). If s 31(3) is not complied with and the appeal is under s 26: (1) the appeal must be taken to have been allowed by a decision of the High Court; (2) the person whose extradition has been ordered must be taken to have been discharged by the High Court; (3) the order for the person's extradition must be taken to have been quashed by the High Court: s 31(6). If s 31(3) is not complied with and the appeal is under s 28 the appeal must be taken to have been dismissed by a decision of the High Court: s 31(7).

6 Ibid s 31(4). The power in s 31(4) may be exercised even after the end of the relevant period: s 31(5). See also *Moulai v Deputy Public Prosecutor of Creteil, France* [2009] EWHC 1030 (Admin), [2009] All ER (D) 156 (May).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1423. Appeal to Supreme Court; powers of Supreme on appeal

1423. Appeal to Supreme Court; powers of Supreme on appeal

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 ss 32, 33 amended: Constitutional Reform Act 2005 Sch 9 para 81.

An appeal lies to the Supreme Court from a decision of the High Court on an appeal against an extradition order¹ or on an appeal against discharge at an extradition hearing². An appeal under this provision lies at the instance of the person in respect of whom the Part 1 warrant was issued, or the authority which issued the Part 1 warrant³. An appeal under this provision lies only with the leave of the High Court or the Supreme Court⁴. Leave to appeal must not be granted unless the High Court has certified that there is a point of law of general public importance involved in the decision, and it appears to the court granting leave that the point is one which ought to be considered by the Supreme Court⁵. An application to the High Court for leave to appeal must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it⁶. An application to the Supreme Court for leave to appeal must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal⁷. If leave to appeal is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted⁸. If the appeal is not brought within the period permitted above, the appeal must be taken to have been brought⁹, and it must be taken to have been dismissed by the Supreme Court immediately after the end of the period permitted¹⁰. The High Court may grant bail to a person appealing under this provision or applying for leave to appeal, against the dismissal of his appeal under a specified provision¹¹.

On such an appeal¹² the Supreme Court may either allow or dismiss the appeal¹³. If the person in respect of whom the Part 1 warrant was issued brings an appeal, and the Supreme Court allows the appeal, the Supreme Court must order the person's discharge, and quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal¹⁴. If the High Court allows an appeal¹⁵ by the person in respect of whom the Part 1 warrant was issued, the authority which issued the warrant brings an appeal¹⁶ against the decision of the High Court, and the Supreme Court allows the appeal, the Supreme Court must quash the order of the High Court¹⁷ discharging the person, and order the person to be extradited to the category 1 territory¹⁸ in which the warrant was issued¹⁹. The following provisions²⁰ apply if the High Court dismisses an appeal²¹ against a decision made by the judge at the extradition hearing, the authority which issued the Part 1 warrant brings an appeal²² against the decision of the High Court, and the Supreme Court allows the appeal²³. If the judge would have been required to order the person in respect of whom the warrant was issued to be extradited had he decided the relevant question²⁴ differently, the Supreme Court must quash the order of the judge discharging the person, and order the person to be extradited to the category 1 territory in which the warrant was issued²⁵. In any other case, the Supreme Court must quash the order of the judge discharging the person in respect of whom the warrant was issued, remit the case to the judge, and direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing²⁶.

If immediately after the High Court orders the person's discharge the court is informed by the authority which issued the Part 1 warrant that it intends to make such an appeal²⁷ (1) the court must remand the person in custody or on bail while the appeal is pending²⁸; (2) if the court remands the person in custody it may later grant bail²⁹; (3) such an appeal cases to be pending at the earliest of these times (a) when the proceedings on the appeal are discontinued; (b) at the end of the permitted period, which is 28 days starting with the day on which leave to

appeal to the Supreme Court against the decision of the High Court on the appeal under a specified provision³⁰ is granted, if no appeal to the Supreme Court is brought before the end of that period; (c) when there is no further step that can be taken by the authority which issued the Part 1 warrant in relation to the appeal, ignoring any power of a court to grant leave to take a step out of time³¹.

1 le on an appeal under the Extradition Act 2003 s 26: see PARA 1419.

2 Ibid s 32(1). An appeal against discharge at an extradition hearing may be brought under s 28: see PARA 1420. For the meaning of 'extradition hearing' see PARA 1409 NOTE 2. Section 32(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 32(2).

4 Ibid s 32(3).

5 Ibid s 32(4).

6 Ibid s 32(5).

7 Ibid s 32(6).

8 Ibid s 32(7).

9 Ibid s 32(8)(a).

10 Ibid s 32(8)(b). These must be ignored for the purposes of s 32(8)(b): (1) any power of a court to extend the period permitted for bringing the appeal; and (2) any power of a court to grant leave to take a step out of time: s 32(9).

11 Ibid s 32(10) (substituted by the Police and Justice Act 2006 Sch 13 para 8(3)). The provision specified is the 2003 Act s 26 (see PARA 1419). The Appellate Jurisdiction Act 1876 s 5 (amended by SI 2006/1016) (composition of Supreme Court for hearing and determination of appeals) applies in relation to an appeal, or an application for leave to appeal, under the 2003 Act s 32 as it applies in relation to an appeal under the 1876 Act: 2003 Act s 32(11). An order of the Supreme Court which provides for an application for leave to appeal under s 32 to be determined by a committee constituted in accordance with the 1876 Act s 5 may direct that the decision of the committee is taken on behalf of the House: 2003 Act s 32(12). 1876 Act repealed as from 1 October 2009 (see SI 2009/1604): Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5.

12 le an appeal under 2003 Act s 32.

13 Ibid s 33(1).

14 Ibid s 33(2), (3). Section 33(3), (5), (7), (8) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

15 le under 2003 Act s 26: see PARA 1419.

16 le under ibid s 32.

17 le under ibid s 27(5): see PARA 1419 TEXT AND NOTE 12.

18 For the meaning of 'category 1 territory', see PARA 1401.

19 2003 Act s 33(4), (5). In a case where s 33(5) applies the Supreme Court must remand, in custody or on bail, the person in respect of whom the warrant was issued: see s 33(10) (s 33(10), (11) added by the Police and Justice Act 2006 Sch 13 para 8(4)).

20 le 2003 Act s 33(7), (8). In a case where s 33(7), (8) apply the Supreme Court must remand, in custody or on bail, the person in respect of whom the warrant was issued: see s 33(10) (as added: see NOTE 19). If the Supreme Court remands the person in custody the High Court may later grant bail: s 33(11).

21 le under ibid s 28.

22 le under ibid s 32.

23 Ibid s 33(6).

24 A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge: ibid s 33(9).

25 Ibid s 33(7).

26 Ibid s 33(8).

27 le an appeal under ibid s 32.

28 Ibid s 33A(1), (2) (s 33A added by the 2006 Act Sch 13 para 8(5)).

29 2003 Act s 3: (see PARA 1419.

31 Ibid s 33A(1), (4).

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1424. Appeals: general

A decision of the judge¹ may be questioned in legal proceedings only by means of an appeal².

¹ See under the Extradition Act 2003 Pt 1 (ss 1-68A).

² See an appeal under *ibid* Pt 1 (ss 168): s 34. The remedy of habeas corpus is precluded by s 34 where there is a right of appeal under the 2003 Act; however, that remedy is available where there is no such right of appeal: *Re Hilali* [2008] UKHL 3, [2008] 2 All ER 207; *Nikonovs v Governor of Brixton Prison* [2005] EWHC 2405 (Admin), [2006] 1 All ER 927, DC (cited in *Re Hilali*).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1425. Extradition where no appeal

1425. Extradition where no appeal

The following provision applies if the appropriate judge¹ orders a person's extradition to a category 1 territory², and no notice of an appeal³ is given before the end of the permitted period⁴. The person must be extradited to the category 1 territory before the end of the required period⁵. If the above provision is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay⁶.

1 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 Extradition Act 2003 s 35(1)(a). For the meaning of 'category 1 territory', see PARA 1401.

3 See under the 2003 Act s 26: see PARA 1419.

4 Ibid s 35(1)(b). The 'permitted period' is the period permitted under s 26. These must be ignored for the purposes of s 35(1)(b): any power of a court to extend the period permitted for giving notice of appeal; and any power of a court to grant leave to take a step out of time: s 35(6). Section 35 does not apply if the order is made under s 46 (see PARA 1434) or s 48 (see PARA 1436): s 35(2).

Section 35(1), (4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

5 2003 Act s 35(3). The required period is ten days starting with the first day after the period permitted under s 26 (see PARA 1419) for giving notice of appeal against the judge's order, or if the judge and the authority which issued the Part 1 warrant agree a later date, ten days starting with the later date: s 35(4) (amended by the Police and Justice Act 2006 Sch 13 para 9(1)). See *R (on the application of Szklanny) v City of Westminster Magistrates' Court* [2007] All ER (D) 332 (Oct). If (1) an order is made for a person to be extradited to a category 1 territory in pursuance of a Part 1 warrant; and (2) before the person is extradited to the territory an order is made under the 2003 Act s 44(4)(b) (see PARA 1432) or s 179(2)(b) (see PARA 1530) for the person's extradition in pursuance of the warrant to be deferred; and (3) the appropriate judge makes an order under s 181(2) (see PARA 1532) for the person's extradition in pursuance of the warrant to cease to be deferred, the required period for the purposes of s 35(3) is 10 days starting with the day on which the order under s 181(2) is made; s 35(3) applies only if the day on which the order is made is later than the day mentioned in s 35(4) (supra): s 38(1), (3) (s 38(3) amended by the 2006 Act Sch 13 para 9(3)). The 2003 Act s 38 does not apply if the order for the person's extradition is made under s 46 (see PARA 1434) or 48 (see PARA 1436): s 38(2).

6 Ibid s 35(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1426. Extradition following appeal

1426. Extradition following appeal

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 36 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following provision applies if there is an appeal to the High Court¹ against an order for a person's extradition to a category 1 territory², and the effect of the decision of the relevant court³ on the appeal is that the person is to be extradited there⁴. The person must be extradited to the category 1 territory before the end of the required period⁵. If the above provision is not complied with and the person applies to the appropriate judge⁶ to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay⁷.

The decision of the High Court on the appeal becomes final: (1) when the period permitted for applying to the High Court for leave to appeal to the Supreme Court ends, if there is no such application; (2) when the period permitted for applying to the Supreme Court for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the Supreme Court for leave to appeal; (3) when the Supreme Court refuses leave to appeal to it; (4) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court is granted, if no such appeal is brought before the end of that period⁸. The decision of the Supreme Court on the appeal becomes final when it is made⁹.

1 Ie under the Extradition Act 2003 s 26: see PARA 1419.

2 For the meaning of 'category 1 territory' see PARA 1401.

3 The relevant court is the High Court, if there is no appeal to the Supreme Court against the decision of the High Court on the appeal; and the Supreme Court, if there is such an appeal: 2003 Act s 36(4).

4 Ibid s 36(1). Section 36(1), (3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

5 2003 Act s 36(2). The required period is ten days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued; or if the relevant court and the authority which issued the Part 1 warrant agree a later date, ten days starting with the later date: s 36(3). If (1) an order is made for a person to be extradited to a category 1 territory in pursuance of a Part 1 warrant; and (2) before the person is extradited to the territory an order is made under s 44(4)(b) (see PARA 1432) or s 179(2)(b) (see PARA 1530) for the person's extradition in pursuance of the warrant to be deferred; and (3) the appropriate judge makes an order under s 181(2) (see PARA 1532) for the person's extradition in pursuance of the warrant to cease to be deferred, the required period for the purposes of s 36(2) is ten days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of s 36), or, if later, the day on which the order under s 181(2) is made: s 38(1), (4). Section 38 does not apply if the order for the person's extradition is made under s 46 (see PARA 1434) or 48 (see PARA 1436): s 38(2).

6 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

7 Ibid s 36(8). See *Owens v City of Westminster Magistrates' Court* [2009] EWHC 1343 (Admin), [2010] 1 WLR 17, [2009] All ER (D) 211 (Jul) (administrative error was reasonable cause).

8 Ibid s 36(5). These must be ignored for the purposes of the s 36(5): any power of a court to extend the period permitted for applying for leave to appeal; any power of a court to grant leave to take a step out of time: s 36(6).

9 Ibid s 36(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1427. Undertaking in relation to person serving sentence in United Kingdom

1427. Undertaking in relation to person serving sentence in United Kingdom

The following provision applies if the appropriate judge¹ orders a person's extradition to a category 1 territory², or the person is serving a sentence of imprisonment or another form of detention in the United Kingdom, either in custody, or on licence³. The judge may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 1 territory in terms specified by him⁴. The terms which may be specified by the judge in relation to a person⁵ accused in a category 1 territory of the commission of an offence include terms (1) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory⁶; (2) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings⁷. The terms which may be specified by the judge in relation to a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom on licence who is accused in a category territory of the commission of an offence include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory⁸. The terms which may be specified by the judge in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 1 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for the offence, and any other offence in respect of which he is permitted to be dealt with in the category 1 territory⁹.

1 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 For the meaning of 'category 1 territory', see PARA 1401.

3 Extradition Act 2003 s 37(1) (amended by the Police and Justice Act 2006 Sch 13 para 10(2)). The 2003 Act s 37 does not apply if the order is made under s 46 (see PARA 1434) or 48 (see PARA 1436): s 37(2). Section 37 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 37(3). Section 37(7), (8) apply if the judge makes an order for extradition subject to a condition under s 37(3): s 37(6). If the judge does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the appropriate judge to be discharged, the judge must order his discharge: s 37(7). If the judge receives the undertaking before the end of that period: (1) in a case where s 35 (see PARA 1425) applies, the required period for extradition for the purposes of s 35(3) is 10 days starting with the day on which the judge receives the undertaking; (2) in a case where s 36 (see PARA 1426) applies, the required period for extradition for the purposes of s 36(2) is ten days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of s 36) or, if later, the day on which the judge receives the undertaking; head (1) applies only if the day mentioned is later than the day mentioned in s 35(4)(a) (see PARA 1425): s 37(8) (amended by the 2006 Act Sch 13 para 9(2)).

5 I.e. a person serving a sentence of imprisonment or another form of detention in the United Kingdom in custody: 2003 Act s 37(4) (amended by the 2006 Act Sch 13 para 10(3)).

6 Ibid s 37(4)(a).

7 Ibid s 37(4)(b).

8 Ibid s 37(4A) (added by the 2006 Act Sch 13 para 10(4)).

9 2003 Act s 37(5). Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is the imprisoning territory, s 37(5) has effect as if 'a category 1 territory' read 'the convicting territory' and as if 'the category 1 territory' (in both places) read 'the convicting territory': see s 63(1), (2), (4)(d).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1428. Asylum claim

1428. Asylum claim

If a person in respect of whom a Part 1 warrant¹ is issued makes an asylum claim² at any time in the relevant period³, and an order is made⁴ for the person to be extradited in pursuance of the warrant, the person must not be extradited in pursuance of the warrant before the asylum claim is finally determined⁵. If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim⁶. If the Secretary of State rejects the asylum claim, the claim is finally determined when: (1) the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State's decision on the claim; (2) the period permitted for appealing against the Secretary of State's decision on the claim ends, if there is such a right but there is no such appeal; (3) the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal⁷.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 'Asylum claim' has the meaning given by the Nationality, Immigration and Asylum Act 2002 s 113(1): Extradition Act 2003 s 216(7).

3 The 'relevant period' is the period starting when a certificate is issued under *ibid* s 2 (see PARA 1402) in respect of the warrant, and ending when the person is extradited in pursuance of the warrant: s 39(2).

4 *Ie* under *ibid* Pt 1 (ss 1-68A).

5 *Ibid* s 39(1), (3). Sections 35 (see PARA 1425), 36 (see PARA 1426), 47 (see PARA 1435) and 49 (see PARA 1437) have effect subject to this provision: see s 39(3). Section 39(3) is subject to s 40: s 39(4). Section 39(3) does not apply in relation to a person if the Secretary of State has certified that the conditions in s 40(2) or the conditions in s 40(3) are satisfied in relation to him: s 40(1). The conditions in s 40(2) are that (1) the category 1 territory to which the person's extradition has been ordered has accepted that, under standing arrangements, it is the responsible state in relation to the person's asylum claim; (2) in the opinion of the Secretary of State, the person is not a national or citizen of the territory. For the meaning of 'category 1 territory', see PARA 1401. For these purposes, 'standing arrangements' means arrangements in force between the United Kingdom and the category 1 territory for determining which state is responsible for considering applications for asylum: s 40(4). The conditions in s 40(3) are that, in the opinion of the Secretary of State, (a) the person is not a national or citizen of the category 1 territory to which his extradition has been ordered; (b) the person's life and liberty would not be threatened in that territory by reason of his race, religion, nationality, political opinion or membership of a particular social group; (c) the government of the territory would not send the person to another country otherwise than in accordance with the Refugee Convention. For these purposes 'the Refugee Convention' has the meaning given by the Immigration and Asylum Act 1999 s 167(1): 2003 Act s 40(4). It is implicit that a person with refugee status cannot be extradited to his country of nationality whose protection he cannot avail himself: *District Court in Ostroleka, Poland v Dytlow* [2009] All ER (D) 202 (Apr), DC.

6 2003 Act s 39(5).

7 *Ibid* s 39(6). An appeal against the Secretary of State's decision on an asylum claim is not finally determined for the purposes of s 39(6) at any time when a further appeal or an application for leave to bring a further appeal has been instituted and has not been finally determined or withdrawn or abandoned, or may be brought: s 39(7). The remittal of an appeal is not a final determination for the purposes of s 39(7): s 39(8). The possibility of an appeal out of time with leave must be ignored for the purposes of s 39(6), (7): s 39(9).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1429. Withdrawal of warrant before extradition

1429. Withdrawal of warrant before extradition

If, at any time in the relevant period¹, the appropriate judge is informed by the designated authority² that a Part 1 warrant³ issued in respect of a person has been withdrawn, the judge must order the person's discharge⁴. If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable⁵.

1 The relevant period is the period starting when the person is first brought before the appropriate judge following his arrest under the Extradition Act 2003 Pt 1 (ss 1-68A), and ending when the person is extradited in pursuance of the warrant or discharged: s 41(2). For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 41(1), (3). Section 41(1), (3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

5 2003 Act s 41(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1430. Withdrawal of warrant while appeal to High Court pending

1430. Withdrawal of warrant while appeal to High Court pending

If, at any time in the relevant period¹, the High Court is informed by the designated authority² that a Part 1 warrant³ issued in respect of a person has been withdrawn, the court must (1) if the appeal is against an extradition order⁴, order the person's discharge and quash the order for his extradition; or (2) if the appeal is against the person's discharge⁵, dismiss the appeal⁶. If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable⁷.

1 The relevant period is the period starting when notice of an appeal to the court is given by the person or the authority which issued the warrant, and ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal: Extradition Act 2003 s 42(2).

2 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 Ie if the appeal is under the 2003 Act s 26: see PARA 1419.

5 Ie if the appeal is under *ibid* s 28: see PARA 1420.

6 *Ibid* s 42(1), (3). Section 42(1), (3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

7 2003 Act s 42(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1431. Withdrawal of warrant while appeal to Supreme Court pending

1431. Withdrawal of warrant while appeal to Supreme Court pending

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 43 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following provision applies if at any time in the relevant period¹ the Supreme Court is informed by the designated authority² that a Part 1 warrant³ issued in respect of a person has been withdrawn⁴. If the appeal is brought by the person in respect of whom the warrant was issued the Supreme Court must order the person's discharge; and quash the order for his extradition, in a case where the appeal was against a decision of the High Court to dismiss an appeal against an extradition order⁵. If the appeal is brought by the authority which issued the warrant the Supreme Court must dismiss the appeal⁶. If the person is not before the Supreme Court at the time it orders his discharge, the Supreme Court must inform him of the order as soon as practicable⁷.

1 The relevant period is the period starting when leave to appeal to the Supreme Court is granted to the person or the authority which issued the warrant, and ending when proceedings on the appeal are discontinued or the Supreme Court makes its decision on the appeal: Extradition Act 2003 s 43(2).

2 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 43(1). Section 43(1), (3), (4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

5 2003 Act s 43(3). As to appeals against an extradition order see s 26; and PARA 1419.

6 Ibid s 43(4).

7 Ibid s 43(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1432. Competing Part 1 warrants

1432. Competing Part 1 warrants

The following provision applies if at any time in the relevant period¹ the following conditions are satisfied in relation to a person in respect of whom a Part 1 warrant² has been issued³. The conditions are that (1) the judge is informed that another Part 1 warrant has been issued in respect of the person; (2) the other warrant falls to be dealt with by the judge or by a judge who is the appropriate judge in another part of the United Kingdom; and (3) the other warrant has not been disposed of⁴. The judge may: (a) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of, if the warrant under consideration has not been disposed of⁵; (b) order the person's extradition in pursuance of the warrant under consideration to be deferred until the other warrant has been disposed of, if an order for his extradition in pursuance of the warrant under consideration has been made⁶. In deciding whether to make such an order⁷, the judge must take account in particular of the relative seriousness of the offences concerned; the place where each offence was committed, or was alleged to have been committed; the date on which each warrant was issued; and whether, in the case of each offence, the person is accused of its commission, but not alleged to have been convicted, or is alleged to be unlawfully at large after conviction⁸. If the judge makes such an order and the person is not already remanded in custody or on bail, the judge must remand the person in custody or on bail⁹. If the person is remanded in custody, the appropriate judge may later grant bail¹⁰.

¹ The relevant period is the period starting when the person is first brought before the appropriate judge following his arrest under the Extradition Act 2003 Pt 1 (ss 1-68A) and ending when the person is extradited in pursuance of the warrant or discharged: s 44(2). For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

² For the meaning of 'Part 1 warrant' see PARA 1402.

³ 2003 Act s 44(1).

⁴ Ibid s 44(3). A Part 1 warrant issued in respect of a person is disposed of: (1) when an order is made for the person's discharge in respect of the warrant and there is no further possibility of an appeal; (2) when the person is taken to be discharged in respect of the warrant; (3) when an order is made for the person's extradition in pursuance of the warrant and there is no further possibility of an appeal: s 213(1). As to the time when there is no further possibility of an appeal see s 213(2); and PARA 1417 NOTE 3.

⁵ Ibid s 44(4)(a).

⁶ Ibid s 44(4)(b).

⁷ Ie an order under ibid s 44(4).

⁸ Ibid s 44(7).

⁹ Ibid s 44(5).

¹⁰ Ibid s 44(6) (amended by the Police and Justice Act 2006 Sch 13 para 16). The 2003 Act s 44 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1433. Consent to extradition

1433. Consent to extradition

A person arrested under a Part 1 warrant¹ may consent to his extradition to the category 1 territory² in which the warrant was issued³. A person provisionally arrested⁴ may consent to his extradition to the category 1 territory concerned⁵. If a person consents to his extradition he must be taken to have waived any right he would have, apart from the consent, not to be dealt with in the category 1 territory for an offence committed before his extradition⁶. Consent must be given before the appropriate judge⁷, must be recorded in writing, and is irrevocable⁸. A person may not give his consent unless he is legally represented before the appropriate judge⁹ at the time he gives consent, or (1) he has been informed of his right to apply for legal aid¹⁰ and has had the opportunity to apply for legal aid, but he has refused or failed to apply; (2) he has applied for legal aid but his application has been refused; (3) he was granted legal aid but the legal aid was withdrawn¹¹.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 For the meaning of 'category 1 territory', see PARA 1401.

3 Extradition Act 2003 s 45(1).

4 *Ie* under *ibid* s 5: see PARA 1405.

5 *Ibid* s 45(2). The category 1 territory concerned is the territory referred to in s 5(1): see s 45(2).

6 *Ibid* s 45(3). Section 45(1)-(3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

7 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

8 2003 Act s 45(4).

9 For these purposes a person is to be treated as legally represented before the appropriate judge if, and only if, he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge: *ibid* s 45(8).

10 For these purposes 'legal aid' means a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service: *ibid* s 45(7)(a).

11 *Ibid* s 45(5), (6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1434. Extradition order following consent

1434. Extradition order following consent

If a person consents to his extradition¹, the judge must remand the person in custody or on bail². If the person is remanded in custody, the appropriate judge may later grant bail³. If the judge has not fixed a date⁴ on which the extradition hearing⁵ is to begin he is not required to do so⁶. If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding⁷. The judge must, within the period of ten days starting with the day on which consent is given, order the person's extradition to the category 1 territory⁸. If the above provision is not complied with and the person applies to the judge to be discharged the judge must order his discharge⁹.

1 Ie under the Extradition Act 2003 s 45: see PARA 1433.

2 Ibid s 46(1), (2).

3 Ibid s 46(3) (amended by the Police and Justice Act 2006 Sch 13 para 16).

4 Ie under the 2003 Act s 8: see PARA 1409.

5 For the meaning of 'extradition hearing' see PARA 1409 NOTE 2.

6 2003 Act s 46(4).

7 Ibid s 46(5). Ie the judge is not required to proceed or continue proceeding under ss 10-25: see PARAS 1411-1418.

8 Ibid s 46(6). For the meaning of 'category 1 territory', see PARA 1401. Section 46(6) has effect subject to ss 48 (see PARA 1436) and 51 (see PARA 1439): s 46(7).

9 Ibid s 46(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1435. Extradition to category 1 territory following consent

1435. Extradition to category 1 territory following consent

If the appropriate judge¹ makes an order following consent² for a person's extradition to a category 1 territory³, the person must be extradited to the category 1 territory before the end of the required period⁴. If the above provision is not complied with and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay⁵. If, before the person is extradited to the category 1 territory the judge is informed by the designated authority⁶ that the Part 1 warrant has been withdrawn, the requirement that the person be extradited within the required period⁷ no longer applies and the judge must order the person's discharge⁸.

1 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 Ie under the Extradition Act 2003 s 46(6): see PARA 1434 TEXT AND NOTE 8.

3 For the meaning of 'category 1 territory' see PARA 1401.

4 2003 Act s 47(1), (2). The required period is ten days starting with the day on which the order is made, or if the judge and the authority which issued the Part 1 warrant agree a later date, ten days starting with the later date: s 47(3). For the meaning of 'Part 1 warrant' see PARA 1402.

5 Ibid s 47(4). The institution of domestic proceedings does not constitute reasonable cause for delay: *R (on the application of the Governor of HMP Wandsworth) v Kinderis* [2007] EWHC 998 (Admin), [2008] 1 All ER 499.

6 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

7 Ie the requirement in the 2003 Act s 47(2).

8 Ibid s 47(5). Section 47(3), (5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1436. Other warrant issued following consent

1436. Other warrant issued following consent

The following provision applies if a person consents¹ to his extradition to a category 1 territory², and, before the judge orders his extradition³, the judge is informed that another Part 1 warrant⁴ has been issued in respect of the person, the warrant falls to be dealt with by the judge or by a judge who is the appropriate judge⁵ in another part of the United Kingdom, and the warrant has not been disposed of⁶. The requirement that the judge must within the period of ten days order the person's extradition⁷ no longer applies but the judge may (1) order the person's extradition in pursuance of his consent⁸; or (2) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of⁹.

If the judge proceeds under head (1) to order the person's extradition, the person must be extradited to the category 1 territory before the end of the required period¹⁰. If this provision is not complied with and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay¹¹. If, before the person is extradited to the category 1 territory, the judge is informed by the designated authority¹² that the Part 1 warrant has been withdrawn the requirement that the person be extradited within the required period¹³ does not apply, and the judge must order the person's discharge¹⁴.

If the judge proceeds under head (2) to make an order for further proceedings to be deferred, he must remand the person in respect of whom the warrant was issued in custody or on bail¹⁵. If the person is remanded in custody, the appropriate judge may later grant bail¹⁶.

1 Ie under the Extradition Act 2003 s 45: see PARA 1433.

2 For the meaning of 'category 1 territory', see PARA 1401.

3 Ie under *ibid* s 46(6): see PARA 1434 TEXT AND NOTE 8.

4 For the meaning of 'Part 1 warrant' see PARA 1402.

5 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

6 2003 Act s 48(1), (2). As to the disposal of a Part 1 warrant see PARA 1432 NOTE 4.

7 Ie the requirement contained in *ibid* s 46(6).

8 *Ibid* s 48(3)(a).

9 *Ibid* s 48(3)(b). Section 48(3) is subject to s 51 (see PARA 1439): s 48(4). In applying s 48(3) the judge must take account in particular of (1) the relative seriousness of the offences concerned; (2) the place where each offence was committed, or was alleged to have been committed; (3) the date on which each warrant was issued; (4) whether, in the case of each offence, the person is accused of its commission, but not alleged to have been convicted, or is alleged to be unlawfully at large after conviction: s 48(5).

Section 48 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

10 2003 Act s 49(1), (2). The required period is ten days starting with the day on which the order is made, or if the judge and the authority which issued the Part 1 warrant agree a later date, ten days starting with the later date: s 49(3).

11 *Ibid* s 49(4).

12 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

13 le the requirement in the 2003 Act s 49(2).

14 Ibid s 49(5). Section 49(3), (5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

15 2003 Act s 50(1), (2).

16 Ibid s 50(3) (amended by the Police and Justice Act 2006 Sch 13 para 16). If an order is made under the 2003 Act s 180 (see PARA 1531) for proceedings on the warrant to be resumed, the period specified in s 46(6) must be taken to be ten days starting with the day on which the order under s 180 is made: s 50(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1437. Extradition request following consent

1437. Extradition request following consent

The following provision applies if a person in respect of whom a Part 1 warrant¹ is issued consents² to his extradition to the category 1 territory³ in which the warrant was issued, and, before the judge orders his extradition⁴, the judge is informed that a certificate has been issued⁵ in respect of a request for the person's extradition to a category 2 territory⁶, and the request has not been disposed of⁷. The judge must not make an order for extradition to the category 1 territory on the basis of consent⁸, until he is informed what order has been made by the Secretary of State⁹ as to which of the Part 1 warrant and the Part 2 request is to proceed first¹⁰. If the order is for further proceedings on the warrant to be deferred until the request has been disposed of, the judge must remand the person in custody or on bail¹¹. If the person is remanded in custody, the appropriate judge may later grant bail¹². If an order is subsequently made¹³ for the resumption of the deferred proceedings on the Part 1 warrant, the period specified¹⁴ within which time the judge must order the person's extradition is ten days starting with the day on which the order for resumption of the proceedings is made¹⁵. If, however, the order made by the Secretary of State¹⁶ is for further proceedings on the competing request to be deferred until the Part 1 warrant has been disposed of, the judge must order the person's extradition to the category 1 territory within ten days starting with the day on which he is informed of the order¹⁷.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie under the Extradition Act 2003 s 45: see PARA 1433.

3 For the meaning of 'category 1 territory', see PARA 1401.

4 Ie under the 2003 Act s 46(6) (see PARA 1434 TEXT AND NOTE 8) or s 48(3)(a) (see PARA 1436 TEXT AND NOTE 8).

5 Ie under ibid s 70: see PARA 1448.

6 For the meaning of 'category 2 territory', see PARA 1447.

7 2003 Act s 51(1), (2). As to the disposal of an extradition request see s 231(2); and PARA 1417 NOTE 3.

8 Ie under ibid ss 46(6), 48(3).

9 Ie under ibid s 179(2): see PARA 1530.

10 See ibid s 51(3).

11 Ibid s 51(4).

12 Ibid s 51(5) (amended by the Police and Justice Act 2006 Sch 13 para 16).

13 Ie under 2003 Act s 180: see PARA 1531.

14 Ie specified in ibid s 46(6).

15 Ibid s 51(6).

16 Ie under ibid s 179(2).

17 See ibid s 51(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1438. Undertaking in relation to person serving sentence

1438. Undertaking in relation to person serving sentence

The following provision applies if the appropriate judge¹ makes an order² for a person's extradition to a category 1 territory³, and the person is serving a sentence of imprisonment or another form of detention in the United Kingdom either in custody or on licence⁴. The judge may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 1 territory in terms specified by him⁵. The terms which may be specified by the judge in relation to a person serving a sentence of imprisonment or another form of detention in the United Kingdom in custody accused in a category 1 territory of the commission of an offence include terms: (1) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory; (2) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings⁶. The terms which may be specified by the judge in relation to a person serving a sentence of imprisonment or another form of detention in the United Kingdom on licence who is accused in a category 1 territory of the commission of an offence include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory⁷. The terms which may be specified by the judge in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 1 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for the offence, and any other offence in respect of which he is permitted to be dealt with in the category 1 territory⁸.

1 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

2 Ie under the Extradition Act 2003 s 46(6) (see PARA 1434 TEXT AND NOTE 8) or s 48(3)(a) (see PARA 1436 TEXT AND NOTE 8).

3 For the meaning of 'category 1 territory', see PARA 1401.

4 2003 Act s 52(1) (amended by the Police and Justice Act 2006 Sch 13 para 11(2)).

5 2003 Act s 52(2). If the judge makes an order for extradition subject to a condition under s 52(2) the required period for the purposes of s 47(2) (see PARA 1435) and s 49(2) (see PARA 1436) is ten days starting with the day on which the judge receives the undertaking: s 52(5).

6 Ibid s 52(3) (amended by the 2006 Act Sch 13 para 11(3)).

7 2003 Act s 52(3A) (added by the 2006 Act Sch 13 para 11(4)).

8 2003 Act s 52(4). Where a Part 1 warrant is issued in relation to a person and the warrant contains a statement that the person has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory, if the category 1 territory is the imprisoning territory, s 52(4) has effect as if 'a category 1 territory' read 'the convicting territory' and as if 'the category 1 territory' (in both places) read 'the convicting territory': see s 63(1), (2), (4)(e).

Section 52 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1439. Extradition following deferral for competing claim

1439. Extradition following deferral for competing claim

The following provision applies if: (1) an order is made¹ for a person to be extradited with his consent to a category 1 territory², in pursuance of a Part 1 warrant³; (2) before the person is extradited to the territory an order is made⁴ for the person's extradition in pursuance of the warrant to be deferred; and (3) the appropriate judge⁵ makes an order⁶ for the person's extradition in pursuance of the warrant to cease to be deferred⁷. The required period⁸ in which the person is to be extradited is 10 days starting with the day on which the order⁹ for the persons' extradition in pursuance of the warrant ceased to be deferred¹⁰.

1 Ie under the Extradition Act 2003 s 46(6) (see PARA 1434 TEXT AND NOTE 8) or s 48(3)(a) (see PARA 1436 TEXT AND NOTE 8).

2 For the meaning of 'category 1 territory', see PARA 1401.

3 For the meaning of 'Part 1 warrant' see PARA 1402.

4 Ie under ibid s 44(4)(b) (see PARA 1432 NOTE 5) or s 179(2)(b) (see PARA 1530).

5 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

6 Ie under the 2003 Act s 181(2): see PARA 1532.

7 Ibid s 53(1).

8 Ie the period required by ibid s 47(2) (see PARA 1435) and s 49(2) (see PARA 1436).

9 Ie the order under ibid s 181(2).

10 Ibid s 53(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1440. Request for consent to other offence being dealt with

1440. Request for consent to other offence being dealt with

The following provision applies if (1) a person is extradited to a category 1 territory¹ in respect of an offence; (2) the appropriate judge² receives a request for consent to the person being dealt with in the territory for another offence; and (3) the request is certified under this provision by the designated authority³. The designated authority may certify a request for consent if it believes that the authority making the request is a judicial authority of the territory⁴, and has the function of making requests for the consent referred to in head (2) above in that territory⁵. The judge must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁶. The consent hearing⁷ must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority⁸. The judge may extend the required period if he believes it to be in the interests of justice to do so; and this provision may apply more than once⁹. If the consent hearing does not begin before the end of the required period and the judge does not exercise the power¹⁰ to extend the period, he must refuse consent¹¹. The judge may at any time adjourn the consent hearing¹².

1 For the meaning of 'category 1 territory', see PARA 1401.

2 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

3 Extradition Act 2003 s 54(1). For the meaning of 'designated authority' see PARA 1402 NOTE 1.

4 Ibid s 54(2)(a).

5 Ibid s 54(2)(b). A certificate under s 54(2) must certify that the authority making the request falls within s 54(2)(a), (b): s 54(3).

6 Ibid s 54(4).

7 The consent hearing is the hearing at which the judge is to consider the request for consent: ibid s 54(10).

8 Ibid s 54(5).

9 Ibid s 54(6). The power in s 54(6) may be exercised even after the end of the required period: s 54(7).

10 Ie in ibid s 54(6).

11 Ibid s 54(8).

12 Ibid s 54(9). Section 54 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1441. Questions for decision at consent hearing

1441. Questions for decision at consent hearing

At the consent hearing¹ the judge must decide whether consent is required to the person being dealt with in the territory for the offence for which consent is requested². If the judge decides that his consent is not necessary he must inform the authority making the request of his decision³. If the judge decides that consent is necessary he must decide whether the offence for which consent is requested is an extradition offence⁴. If he decides that it is not an extradition offence he must refuse consent⁵. If the judge decides that it is an extradition offence he must decide whether he would order the person's extradition⁶ if the person were in the United Kingdom⁷, and the judge were required to proceed⁸ in respect of the offence for which consent is requested⁹. If he decides that he would order the person's extradition he must give consent¹⁰, and if he decides that he would not, he must refuse consent¹¹. Consent is not required to the person being dealt with in the territory for the offence if the person has been given an opportunity to leave the territory and he has not done so before the end of the permitted period¹², or if he did so before the end of the permitted period, he has returned there¹³. Subject to the above provision, the judge must decide whether consent is required to the person being dealt with in the territory for the offence by reference to what appears to him to be the law of the territory or arrangements made between the territory and the United Kingdom¹⁴.

¹ I.e. the hearing under the Extradition Act 2003 s 54: see PARA 1440. For the meaning of 'consent hearing' see PARA 1440 NOTE 7.

² Ibid s 55(1).

³ See ibid s 55(2).

⁴ See ibid s 55(3). For the meaning of 'extradition offence' see PARAS 1406, 1407.

⁵ See ibid s 55(4).

⁶ I.e. under ibid ss 11-25: see PARAS 1412-1418.

⁷ Ibid s 55(5)(a).

⁸ I.e. under ibid s 11: see PARA 1412.

⁹ Ibid s 55(5)(b).

¹⁰ See ibid s 55(6). See *Chyba v District Court in Strakonice, Czech Republic* [2008] All ER (D) 60 (Dec).

¹¹ See 2003 Act s 55(7).

¹² Ibid s 55(8)(a). The permitted period is 45 days starting with the day on which the person arrived in the territory following his extradition there in accordance with Pt 1 (ss 1-68A): s 55(9)

¹³ Ibid s 55(8)(b).

¹⁴ Ibid s 55(10). Section 55 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1442. Request for consent to further extradition to category 1 territory

1442. Request for consent to further extradition to category 1 territory

If a person is (1) extradited¹ to a category 1 territory² (the requesting territory); and (2) the appropriate judge³ receives a request for consent to the person's extradition to another category 1 territory for an offence; and (3) the request is certified by the designated authority⁴, the designated authority may certify a request for consent if it believes that the authority making the request (a) is a judicial authority of the requesting territory, and (b) has the function of making requests for the consent referred to in head (2) above in that territory⁵. The judge must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁶. The consent hearing⁷ must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority⁸. The judge may extend this period if he believes it to be in the interests of justice to do so, and may do so more than once⁹. If the consent hearing does not begin before the end of the required period and the judge does not exercise the power to extend the period, he must refuse consent¹⁰. The judge may at any time adjourn the consent hearing¹¹.

At the consent hearing the judge must decide whether consent is required to the person's extradition to the other category 1 territory for the offence¹². If the judge decides that it is not, he must inform the requesting authority of his decision¹³. If the judge decides that consent is required, he must then consider whether the offence is an extradition offence¹⁴ in relation to the further category 1 territory¹⁵. If the judge decides that it is not such an offence he must refuse consent¹⁶. If the judge decides that the offence is an extradition offence, he must decide whether he would order the person's extradition¹⁷ if the person were in the United Kingdom, and the judge were required to proceed¹⁸ in respect of the offence for which consent is requested¹⁹. If the judge decides that he would have done so he must give consent²⁰. If he decides that he would not have done so he must refuse consent²¹. Consent is not required to the person's extradition to the other territory for the offence if the person has been given an opportunity to leave the requesting territory and he has not done so before the end of the permitted period²², or, if he did so before the end of the permitted period, he has returned there²³. Subject to this exception in the given circumstances, the judge must decide whether consent is required to the person's extradition to the other territory for the offence by reference to what appears to him to be the arrangements made between the requesting territory and the United Kingdom²⁴.

1 In accordance with the Extradition Act 2003 Pt 1 (ss 1 -68).

2 For the meaning of 'category 1 territory', see PARA 1401.

3 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

4 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

5 2003 Act s 56(1), (2). A certificate under s 56(2) must certify that the authority making the request falls within s 56(2)(a), (b) (see TEXT heads (a), (b)): s 56(3).

6 Ibid s 56(4).

7 The consent hearing is the hearing at which the judge is to consider the request for consent: *ibid* s 56(10).

8 Ibid s 56(5).

- 9 See *ibid* s 56(6). The power in s 56(6) may be exercised even after the end of the required period: s 56(7).
- 10 *Ibid* s 56(8).
- 11 *Ibid* s 56(9). Section 56 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see *PARA* 1402.
- 12 2003 Act s 57(1).
- 13 See *ibid* s 57(2).
- 14 For the meaning of 'extradition offence' see *PARAS* 1406, 1407.
- 15 See the 2003 Act s 57(3). For these purposes, the category 1 territory is the one referred to in s 56(1)(b) (see *TEXT* head (2)).
- 16 See *ibid* s 57(4).
- 17 *Ie* under *ibid* ss 11-25: see *PARAS* 1412-1418.
- 18 *Ie* under *ibid* s 11.
- 19 See *ibid* s 57(5).
- 20 See *ibid* s 57(6).
- 21 *Ibid* s 57(7).
- 22 The permitted period is 45 days starting with the day on which the person arrived in the requesting territory following his extradition there in accordance with Pt 1 (ss 1-68A): s 57(9).
- 23 *Ibid* s 57(8).
- 24 *Ibid* s 57(10). Section 57 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1443. Consent to further extradition to category 2 territory

1443. Consent to further extradition to category 2 territory

If (1) a person is extradited to a category 1 territory¹ (the requesting territory); (2) the Secretary of State receives a request for consent to the person's extradition to a category 2 territory² for an offence; and (3) the request is certified by the designated authority³, the designated authority may certify a request for consent if it believes that the authority making the request (a) is a judicial authority of the requesting territory, and (b) has the function of making requests for the consent referred to in head (2) above in that territory⁴. The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁵. The Secretary of State must decide whether the offence is an extradition offence⁶ in relation to the category 2 territory⁷. If the Secretary of State decides that it is not, he must refuse consent⁸. If the Secretary of State decides that the offence is an extradition offence he must decide whether the appropriate judge⁹ would send the case to him¹⁰, for his decision whether the person was to be extradited, if the person were in the United Kingdom, and the judge were required to proceed¹¹ in respect of the offence for which the Secretary of State's consent is requested¹². If the Secretary of State decides that the judge would not, he must refuse his consent¹³. If the Secretary of State decides that the judge would send him the case, he must decide whether, if the person were in the United Kingdom, his extradition to the category 2 territory in respect of the offence would be prohibited¹⁴. If the Secretary of State decides that it would not have been prohibited, he may give consent¹⁵. If the Secretary of State decides that his extradition would have been prohibited he must refuse consent¹⁶.

1 For the meaning of 'category 1 territory', see PARA 1401.

2 For the meaning of 'category 2 territory' see PARA 1447.

3 For the meaning of 'designated authority' see PARA 1402 NOTE 1.

4 Extradition Act 2003 s 58(1), (2). A certificate under s 58(2) must certify that the authority making the request falls within s 58(2)(a), (b) (see text heads (a), (b)): s 58(3).

5 Ibid s 58(4).

6 In within the meaning given by ibid s 137: see PARA 1451.

7 2003 Act s 58(5).

8 See ibid s 58(6).

9 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

10 In under the 2003 Act ss 79-91: see PARAS 1456-1463.

11 In under ibid s 79: see PARA 1456.

12 Ibid s 58(7).

13 See ibid s 58(8).

14 See ibid s 58(9). For these purposes, a person's extradition to a category 2 territory may be prohibited under s 94 (see PARA 1466), 95 (see PARA 1467) or 96 (see PARA 1468).

15 Ibid s 58(10).

16 Ibid s 58(11).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1444. Return of person to serve remainder of sentence

1444. Return of person to serve remainder of sentence

If a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited¹ to a category 1 territory², and the person is returned to the United Kingdom to serve the remainder of his sentence, and the person is not yet entitled to be released from detention pursuant to his sentence, whether on licence or otherwise, he is liable to be detained in pursuance of his sentence³. If he is at large he must be treated as being unlawfully at large⁴. Time during which the person was not in the United Kingdom as a result of his extradition does not count as time served by him as part of his sentence⁵, unless the person was extradited for the purpose of being prosecuted for an offence, and the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the category 1 territory⁶. In such a case⁷, time during which the person was not in the United Kingdom as a result of his extradition counts as time served by him as part of his sentence if, and only if, it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the territory⁸.

1 Ie in accordance with the Extradition Act 2003 Pt 1 (ss 1-68A).

2 For the meaning of 'category 1 territory' see PARA 1401.

3 2003 Act s 59(1), (2) (s 59(1) amended by the Police and Justice Act 2006 Sch 13 para 12).

4 2003 Act s 59(3).

5 Ibid s 59(4).

6 Ibid s 59(5).

7 Ie in a case falling within ibid s 59(5).

8 Ibid s 59(6). Section 59 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1445. Costs where extradition ordered

1445. Costs where extradition ordered

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 60 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following provision applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant¹ is issued: (1) an order for the person's extradition is made²; (2) the High Court dismisses an appeal against an extradition order³; (3) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court⁴, if the application is made by the person; (4) the Supreme Court dismisses an appeal⁵, if the appeal is brought by the person⁶. In a case falling within head (1) above, the appropriate judge⁷ may make such order as he considers just and reasonable with regard to the costs to be paid by the person⁸. In a case falling within heads (2), (3) or (4) above, the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person⁹. An order for costs under this provision must specify their amount, and may name the person to whom they are to be paid¹⁰.

- 1 For the meaning of 'Part 1 warrant' see PARA 1402.
- 2 Ie under the Extradition Act 2003 Pt 1 (ss 1-68A).
- 3 Ie under ibid s 26: see PARA 1419.
- 4 Ie under ibid s 32: see PARA 1423.
- 5 Ie under ibid s 32.
- 6 Ibid s 60(1).
- 7 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.
- 8 2003 Act s 60(2).
- 9 Ibid s 60(3).
- 10 Ibid s 60(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/11. EXTRADITION TO CATEGORY 1 TERRITORIES/1446. Costs where discharge ordered

1446. Costs where discharge ordered

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 61 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following provision applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant¹ is issued: (1) an order for the person's discharge is made²; (2) the person is taken to be discharged; (3) the High Court dismisses an appeal³; (4) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court⁴, if the application is made by the authority which issued the warrant; (5) the Supreme Court dismisses an appeal⁵, if the appeal is brought by the authority which issued the warrant⁶. In a case falling within head (1) above, an order for costs⁷ in favour of the person may be made by (a) the appropriate judge⁸, if the order for the person's discharge is made by him; (b) the High Court, if the order for the person's discharge is made by it; (c) the Supreme Court, if the order for the person's discharge is made by it⁹. In a case falling within head (2) above, the appropriate judge may make an order for costs¹⁰ in favour of the person¹¹. In a case falling within heads (3), (4) or (5), the court by which the application or appeal is dismissed may make an order for costs¹² in favour of the person¹³. But if the judge or court making such an order is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made recover the full amount¹⁴, the judge or court must assess what amount would in his or its opinion be just and reasonable, and specify that amount in the order as the appropriate amount¹⁵. In other circumstances, the appropriate amount must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount¹⁶; and must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this provision, in any other case¹⁷.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie under the Extradition Act 2003 Pt 1 (ss 1-68A).

3 Ie under ibid s 28: see PARA 1420.

4 Ie under ibid s 32: see PARA 1423.

5 Ie under ibid s 32.

6 Ibid s 61(1).

7 Ie under ibid s 61(5). An order under s 61(5) in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament: s 61(5). The appropriate amount is such amount as the judge or court making the order under s 61(5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under Pt 1: s 61(6).

8 For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

9 Ibid s 61(2).

10 Ie under ibid s 61(5).

11 Ibid s 61(3).

12 Ie under ibid s 61(5).

13 Ibid s 61(4).

14 le mentioned in *ibid* s 61(6).

15 *Ibid* s 61(7).

16 *Ibid* s 61(8)(a).

17 *Ibid* s 61(8)(b). In England and Wales, the Prosecution of Offences Act 1985 s 20(1), (3) applies in relation to the 2003 Act s 61 as the 1985 s 20(1), (3) applies in relation to the 1985 Act Pt 2 (ss 69-141) (see *PARAS* 1447-1512); Extradition Act 2003 s 62(1). As so applied the 1985 Act s 20(1), (3) has effect as if an order under the 2003 Act s 61(5) were an order under the 1985 Act Pt 2 for a payment to be made out of central funds: 2003 Act s 62(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1447. Extradition to category 2 territories

12. EXTRADITION TO CATEGORY 2 TERRITORIES

1447. Extradition to category 2 territories

Provision¹ has been made dealing with extradition from the United Kingdom to the territories designated for such purposes by order made by the Secretary of State². References to category 2 territories are to the designated territories³.

¹ I.e. the Extradition Act 2003 Pt 2 (ss 69-141).

² Ibid s 69(1). The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 2 (amended by SI 2004/1898, SI 2005/365, SI 2005/2036, SI 2008/1589) sets out the territories designated for these purposes.

³ I.e. designated for the purposes of the 2003 Act Pt 2: ss 69(2), 216(2). A territory may be designated by being named in an order made by the Secretary of State or by falling within a description set out in such an order made under the 2003 Act: s 223(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1448. Extradition request and certificate

1448. Extradition request and certificate

The Secretary of State must issue a certificate if he receives a valid request for the extradition of a person to a category 2 territory¹. The Secretary of State may refuse to issue a certificate under this provision if he has power² to order that proceedings on the request be deferred, the person whose extradition is requested has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention³, or the person whose extradition is requested has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of a specified provision⁴ to remove him to the territory to which extradition is requested⁵. A request for a person's extradition is valid if it contains a statement, made in the approved way⁶, in which (1) the person is accused in the category 2 territory of the commission of an offence specified in the request⁷; (2) the request is made with a view to his arrest and extradition to the category 2 territory for the purpose of being prosecuted for the offence; (3) the person has been convicted of an offence specified in the request by a court in the category 2 territory; and (4) the request is made with a view to his arrest and extradition to the category 2 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence⁸. A request for extradition to a category 2 territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the territory⁹. A request for extradition to a category 2 territory¹⁰ is made in the approved way if it is made by an authority of the territory which the Secretary of State believes has the function of making requests for extradition in that territory¹¹, or by a person recognised by the Secretary of State as a diplomatic or consular representative of the territory¹². An extradition certificate¹³ must certify that the request is made in the approved way and identify the order by which the territory in question is designated as a category 2 territory¹⁴. If such a certificate is issued the Secretary of State must send the request and the certificate to the appropriate judge¹⁵.

1 Extradition Act 2003 s 70(1) (s 70(1), (2), (8), (9) amended, s 70(2) substituted by the Police and Justice Act 2006 Sch 13 para 17), 2003 Act s 216(6). Section 70 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. For the meaning of 'category 2 territory' see PARA 1447.

2 *Ie* under the 2003 Act s 126: see PARA 1492.

3 'Refugee Convention' has the meaning given by the Immigration and Asylum Act 1999 s 167(1) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 180): 2003 Act s 70(2) (as amended: see NOTE 1).

4 *Ie* the European Convention on Human Rights arts 2 or 3 (see HUMAN RIGHTS): 2003 Act s 70(2) (as amended: see NOTE 1).

5 *Ibid* s 70(2) (as amended: see NOTE 1).

6 *Ibid* s 70(3) (amended by the Police and Justice Act 2006 s 42, Sch 13, Pt 1 para 1(2)(a)).

7 2003 Act s 70(4)(a) (s 70(4), (4A) substituted by the 2006 Act Sch 13 para 1(2)(b)).

8 2003 Act s 70(4)(b), (4A).

9 *Ibid* s 70(5).

10 le other than to the Hong Kong Special Administrative Region of the People's Republic of China. A request for extradition to that Region is made in the approved way if it is made by or on behalf of the government of the Region: *ibid* s 70(6).

11 *Ibid* s 70(7)(a).

12 *Ibid* s 70(7)(b).

13 le an extradition certificate made under *ibid* s 70.

14 *Ibid* s 70(8) (as amended: see NOTE 1). See *Akaroglu v Government of Romania; R (on the application of Akaroglu) v Secretary of State for the Home Department* [2007] EWHC 367 (Admin), [2008] 1 All ER 27, DC.

15 2003 Act s 70(9) (as amended: see NOTE 1). The appropriate judge is a District Judge (Magistrates' Courts) designated for the purposes of Pt 2 (ss 69-141) by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor: s 139(1)(a) (amended by Constitutional Reform Act 2005 Sch 4 para 354(2)). The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 139(1)(a): s 139(5) (added by 2005 Act Sch 4 para 354(4)). Such a designation under the 2003 Act s 139(1)(a) may be made for all cases or for such cases, or cases of such description, as the designation stipulates, and more than one designation may be made under the 2003 Act s 139(1): s 139(2), (3), (4). The use of the expression 'the judge' in a section containing a previous reference to 'the appropriate judge' or 'the judge' does not in itself require both references to be read as referring to the same individual: s 139(3A) (added by the Police and Justice Act 2006 Sch 13 para 15(1)).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1449. Arrest warrant following extradition request

1449. Arrest warrant following extradition request

If the Secretary of State sends documents to the appropriate judge¹, the judge may issue a warrant for the arrest of the person whose extradition is requested if he has reasonable grounds for believing that the offence in respect of which extradition is requested is an extradition offence², and there is evidence³ that would justify the issue of a warrant for the arrest of (1) a person accused of the offence within the judge's jurisdiction, if the person whose extradition is requested is accused of the commission of the offence⁴; (2) a person unlawfully at large after conviction of the offence within the judge's jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence⁵.

An arrest warrant⁶ may be executed by any person to whom it is directed or by any constable or customs officer⁷, and may be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest⁸. If such an arrest warrant in respect of a person is directed to a service policeman⁹, and is in respect of a person subject to service law or a civilian subject to service discipline, it may be executed anywhere¹⁰. In any other case, such an arrest warrant may be executed in any part of the United Kingdom¹¹.

If a person is arrested under an arrest warrant¹², a copy of the warrant must be given to the person as soon as practicable after his arrest¹³, and he must be brought as soon as practicable before the appropriate judge¹⁴. However, the requirement for the person to be brought as soon as practicable before the appropriate judge does not apply if the person is granted bail by a constable following his arrest¹⁵, or if the Secretary of State decides¹⁶ that the request for the person's extradition is not to be proceeded with¹⁷. When the person first appears or is brought before the appropriate judge, the judge must inform him of the contents of the request for his extradition¹⁸, give him the required information about consent¹⁹, and remand him in custody or on bail²⁰. If the person is remanded in custody, the appropriate judge may later grant bail²¹.

1 Ie under the Extradition Act 2003 s 70 (see PARA 1448): s 71(1). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ibid s 71(2)(a). For the meaning of 'extradition offences' see PARAS 1451, 1452. Section 71(2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 If the category 2 territory to which extradition is requested is designated for the purposes of the 2003 Act s 71 by order made by the Secretary of State, s 71(2), (3) have effect as if 'evidence' read 'information': s 71(4). For the meaning of 'category 2 territory' see PARA 1447. As to the territories which have been designated for the purposes of ss 71(4), 73(5), 84(7) and 86(7), see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 3 (amended by SI 2004/1898, SI 2005/365, SI 2005/2036, SI 2007/2238, Police and Justice Act 2006 s 43(1) (not yet in force)). An order bringing s 43(1) into force is not to be made (1) within the period of 12 months beginning with the day on which the 2006 Act is passed, or (2) if instruments of ratification of the

4 2003 Act s 71(2)(b), (3)(a).

5 Ibid s 71(2)(b), (3)(b). A person is alleged to be unlawfully at large after conviction of an offence if he is alleged to have been convicted of it, and his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence: s 140A (added by the Police and Justice Act 2006 Sch 13 para 2(4)).

6 Ie a warrant issued under the 2003 Act s 71.

7 Ibid s 71(5)(a). For the meaning of 'customs officer' see PARA 1403 NOTE 4.

8 Ibid s 71(5)(b).

9 For the meaning of 'service policeman' see PARA 1403 NOTE 5.

10 Ibid s 71(6) (substituted by the Armed Forces Act 2006 Sch 16 para 202). 'Subject to service law' and 'civilian subject to service discipline' have the same meaning as in the Armed Forces Act 2006 (see ARMED FORCES): 2003 Act s 216(7A), (13A) (added by the Armed Forces Act 2006 Sch 16 para 205).

11 2003 Act s 71(7).

12 Ie a warrant issued under ibid s 71: s 72(1).

13 Ibid s 72(2). If s 72(2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge: s 72(5).

14 Ibid s 72(3). If s 72(3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge: s 72(6).

15 Ibid s 72(4)(a).

16 Ie under ibid s 126: see PARA 1492.

17 Ibid s 72(4)(b).

18 Ibid s 72(7)(a).

19 Ibid s 72(7)(b). The required information about consent is (1) that the person may consent to his extradition to the category 2 territory to which his extradition is requested; (2) an explanation of the effect of consent and the procedure that will apply if he gives consent; (3) that consent must be given in writing and is irrevocable: s 72(8).

20 Ibid s 72(7)(c).

21 Ibid s 72(9) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1450. Provisional warrant

1450. Provisional warrant

If a justice of the peace is satisfied on information in writing and on oath that a person¹ is or is believed to be in the United Kingdom², or is or is believed to be on his way to the United Kingdom³, the justice may issue a warrant for the arrest of the person (a 'provisional warrant') if he has reasonable grounds for believing that the offence of which the person is accused or has been convicted is an extradition offence⁴, and there is written evidence⁵ that would justify the issue of a warrant for the arrest of (1) a person accused of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence⁶; (2) a person unlawfully at large after conviction of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence⁷.

A provisional arrest warrant⁸ may be executed by any person to whom it is directed or by any constable or customs officer⁹, and may be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest¹⁰. If such a provisional arrest warrant in respect of a person is directed to a service policeman¹¹, and is in respect of a person subject to service law or a civilian subject to service discipline, it may be executed anywhere¹². In any other case, such an arrest warrant may be executed in any part of the United Kingdom¹³.

If a person is arrested under a provisional arrest warrant¹⁴, a copy of the warrant must be given to the person as soon as practicable after his arrest¹⁵, and he must be brought as soon as practicable before the appropriate judge¹⁶.

However, the requirement for the person to be brought as soon as practicable before the appropriate judge does not apply if the person is granted bail by a constable following his arrest¹⁷, or in a case where the Secretary of State has received a valid request for the person's extradition¹⁸, the Secretary of State decides¹⁹ that the request is not to be proceeded with²⁰. When the person first appears or is brought before the appropriate judge, the judge must inform him that he is accused of the commission of an offence in a category 2 territory²¹ or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory²², give him the required information about consent²³, and remand him in custody or on bail²⁴. If the person is remanded in custody, the appropriate judge may later grant bail²⁵.

The judge must order the person's discharge if certain specified documents²⁶ are not received by the judge within the required period²⁷.

1 le a person who is accused in a category 2 territory of the commission of an offence, or is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory: Extradition Act 2003 s 73(2). For the meaning of 'category 2 territory' see PARA 1447.

2 Ibid s 73(1)(a).

3 Ibid s 73(1)(b).

4 Ibid s 73(3)(a). For the meaning of 'extradition offences' see PARAS 1451, 1452. Section 73(3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. See *Deuss v A-G for Bermuda* [2009] UKPC 38, [2010] 1 All ER 1059, in which it was held that it was unnecessary for protracted inquiries to be made before the issue of a provisional warrant.

5 If the category 2 territory is designated for the purposes of the 2003 Act s 73 by order made by the Secretary of State, s 73(3), (4) have effect as if 'evidence' read 'information': s 73(5). For the meaning of 'category 2 territory' see PARA 1447. As to the territories which have been so designated, see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 3; and PARA 1449.

6 2003 Act ss 73(3)(b), (4)(a).

7 Ibid s 73(3)(b), (4)(b). For the meaning of 'unlawfully at large' see PARA 1449.

8 Ie a warrant issued under ibid s 73.

9 Ibid s 73(5)(a). For the meaning of 'customs officer' see PARA 1403 NOTE 4.

10 Ibid s 73(5)(b).

11 For the meaning of 'service policeman' see PARA 1403 NOTE 5.

12 Ibid s 73(7) (substituted by the Armed Forces Act 2006 Sch 16 para 203). 'Subject to service law' and 'civilian subject to service discipline' have the same meaning as in the Armed Forces Act 2006 (see ARMED FORCES): 2003 Act s 216(7A), (13A) (added by the Armed Forces Act 2006 Sch 16 para 205).

13 2003 Act s 73(8).

14 Ie a warrant issued under ibid s 73: s 74(1).

15 Ibid s 74(2). If s 74(2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge: s 74(5).

16 Ibid s 74(3). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14. If s 74(3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge: s 74(6).

17 Ibid s 74(4)(a).

18 As to a valid request for a person's extradition see PARA 1448.

19 Ie under the 2003 Act s 126: see PARA 1492.

20 Ibid s 74(4)(b).

21 For the meaning of 'category 2 territory' see PARA 1447.

22 2003 Act s 74(7)(a).

23 Ibid s 74(7)(b). The required information about consent is (1) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence; (2) an explanation of the effect of consent and the procedure that will apply if he gives consent; (3) that consent must be given in writing and is irrevocable: s 74(8).

24 Ibid s 74(7)(c).

25 Ibid s 74(9) (amended by the Police and Justice Act 2006 Sch 13 para 16).

26 Ie the documents referred to in the 2003 Act s 70(9): see PARA 1448.

27 Ibid s 74(10). The required period is 45 days starting with the day on which the person was arrested or, if the category 2 territory is designated by order made by the Secretary of State for the purposes of s 74, any longer period permitted by the order: s 74(11). As to the territories which have been so designated, see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 4 (amended by SI 2004/1898, SI 2005/365, SI 2008/1589).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1451. Extradition offences: person not sentenced for offence

1451. Extradition offences: person not sentenced for offence

The following applies in relation to conduct of a person if he is accused in a category 2 territory¹ of the commission of any specified offence² constituted by the conduct, or he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct and he has not been sentenced for the offence³. The conduct constitutes an extradition offence in relation to the category 2 territory if (1) the conduct occurs in the category 2 territory, the conduct would constitute an offence under the law of the relevant part of the United Kingdom⁴ punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom, and the conduct is so punishable under the law of the category 2 territory, however it is described in that law⁵; (2) the conduct occurs outside the category 2 territory, the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment, however it is described in that law, and in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment⁶; (3) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom, the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom, and the conduct is so punishable under the law of the category 2 territory, however it is described in that law⁷; or (4) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom, the conduct is punishable under the law of the category 2 territory with imprisonment for a term of 12 months or another form of detention or a greater punishment, however it is described in that law, and the conduct constitutes or if committed in the United Kingdom would constitute a specified offence⁸.

However, if the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence⁹.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 The offences are (1) an offence under the International Criminal Court Act 2001 s 51 or 58 (genocide, crimes against humanity and war crimes) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454); (2) an offence under the International Criminal Court Act 2001 s 52 or 59 (conduct ancillary to genocide etc committed outside the jurisdiction) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 455); (3) an ancillary offence, as defined in the International Criminal Court Act 2001 s 55 or 62, in relation to an offence falling within head (1) or (2); Extradition Act 2003 s 137(6).

3 Ibid s 137(1). Section 137 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. For the meaning of 'unlawfully at large' see PARA 1449.

4 The relevant part of the United Kingdom is the part of the United Kingdom in which the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State, or proceedings in which it is necessary to decide that question are taking place, in any other case: 2003 Act s 137(8). The extradition hearing is the hearing at which the appropriate judge is to deal with a request for extradition to a category 2 territory: s 140(1). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14. Section 140 applies for the purposes of Pt 2 (ss 69-141): s 140(2).

5 Ibid s 137(2). See *Norris v Government of the United States of America* [2008] UKHL 16, [2008] 2 All ER 1103 (charge of price-fixing); *Hoholm v Government of Norway* [2009] EWHC 1513 (Admin), [2009] All ER (D) 269 (Jun) (charge of abduction of children by parent).

6 2003 Act s 137(3).

7 Ibid s 137(4).

8 Ibid s 137(5). The specified offences are those mentioned in s 137(6): see NOTE 2.

9 Ibid s 137(7). Section 137(1)-(7) apply for the purposes of Pt 2: s 137(9).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1452. Extradition offences: person sentenced for offence

1452. Extradition offences: person sentenced for offence

The following applies in relation to conduct of a person if he is alleged to be unlawfully at large after conviction by a court in a category 2 territory¹ of an offence² constituted by the conduct³, and he has been sentenced for the offence⁴. The conduct constitutes an extradition offence in relation to the category 2 territory if: (1) the conduct occurs in the category 2 territory, the conduct would constitute an offence under the law of the relevant part of the United Kingdom⁵ punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom, and a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 2 territory in respect of the conduct⁶; (2) the conduct occurs outside the category 2 territory, a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 2 territory in respect of the conduct, and in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment⁷; (3) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom, the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom, and a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the category 2 territory in respect of the conduct⁸; (4) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom, a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct, and the conduct constitutes or if committed in the United Kingdom would constitute a specified offence⁹.

If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence¹⁰.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 The offences are (1) an offence under the International Criminal Court Act 2001 s 51 or 58 (genocide, crimes against humanity and war crimes) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454); (2) an offence under the International Criminal Court Act 2001 s 52 or 59 (conduct ancillary to genocide etc committed outside the jurisdiction) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 455); (3) an ancillary offence, as defined in the International Criminal Court Act 2001 s 55 or 62, in relation to an offence falling within head (1) or (2); Extradition Act 2003 s 138(6).

3 Ibid s 138(1)(a). Section 138 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. For the meaning of 'unlawfully at large' see PARA 1449.

4 2003 Act s 138(1)(b).

5 The relevant part of the United Kingdom is the part of the United Kingdom in which the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State, or proceedings in which it is necessary to decide that question are taking place, in any other case: ibid s 138(8). For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

6 Ibid s 138(2).

7 Ibid s 138(3).

8 Ibid s 138(4).

9 Ibid s 138(5). The specified offences are those mentioned in s 138(6): see NOTE 2.

10 Ibid s 138(7). Section 138(1)-(6) have effect subject to s 138(7); s 138(7). Section 138(1)-(7) apply for the purposes of Pt 2 (ss 69-141); s 138(9).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1453. Date of extradition hearing

1453. Date of extradition hearing

When a person arrested under a warrant¹ first appears or is brought before the appropriate judge², the judge must fix a date on which the extradition hearing³ is to begin⁴. If a person is arrested under a provisional warrant⁵, and certain specified documents⁶ are received by the appropriate judge⁷ within the period required⁸, the judge must fix a date on which the extradition hearing is to begin⁹. The date so fixed must not be later than the end of two months starting with, in the case of a warrant, the date on which the person first appears or is brought before the judge¹⁰ and, in the case of a provisional warrant, the date on which the judge receives the documents¹¹. If before the date on which the extradition hearing is fixed a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date¹². If the extradition hearing does not begin on or before the fixed date and the person applies to the judge to be discharged, the judge must order his discharge¹³.

1 le issued under the Extradition Act 2003 s 71: see PARA 1449.

2 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

3 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

4 2003 Act s 75(1).

5 For the meaning of 'provisional warrant' see PARA 1450.

6 le referred to in the 2003 Act s 74(9): see PARA 1450.

7 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

8 le under the 2003 Act s 74(10): see PARA 1450.

9 Ibid s 76(1), (2).

10 Ibid s 75(2).

11 Ibid s 76(3).

12 Ibid ss 75(3), 76(4). Sections 75(3), 76(4) may apply more than once: ss 75(3), 76(4).

13 Ibid ss 75(4), 76(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1454. Judge's powers at extradition hearing

1454. Judge's powers at extradition hearing

In England and Wales, at the extradition hearing¹ the appropriate judge² has the same powers, as nearly as may be, as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested³. If the judge adjourns the extradition hearing he must remand the person in custody or on bail⁴. If the person is remanded in custody, the appropriate judge may later grant bail⁵.

1 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

2 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

3 Extradition Act 2003 s 77(1). Section 77 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 77(4).

5 Ibid s 77(5) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1455. Initial stages of extradition hearing

1455. Initial stages of extradition hearing

If a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge¹ for the extradition hearing², the judge must decide whether the documents sent to him by the Secretary of State consist of or include (1) certain specified documents³; (2) particulars of the person whose extradition is requested⁴; (3) particulars of the offence specified in the request⁵; (4) in the case of a person accused of an offence, a warrant for his arrest⁶ issued in the category 2 territory⁷; (5) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and, if he has been sentenced, of the sentence⁸.

If the judge decides that the documents do not consist of or include the matters referred to in heads (1)-(5) above, he must order the person's discharge⁹. If the judge decides that the documents do consist of or include those matters, he must decide whether, on a balance of probabilities, the person appearing or brought before him is the person whose extradition is requested¹⁰, whether the offence specified in the request is an extradition offence¹¹, and whether copies of the documents sent to the judge by the Secretary of State have been served on the person¹². If the judge decides any of those questions in the negative he must order the person's discharge¹³, and if he decides those questions in the affirmative he must decide whether the person's extradition is barred¹⁴.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Extradition Act 2003 s 78(1). For the meaning of 'extradition hearing' see PARAS 1451 NOTE 4.

3 The documents referred to in *ibid* s 70(9) (see PARA 1448): s 78(2)(a). Section 78(2)-(4), (6), (7) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 78(2)(b).

5 *Ibid* s 78(2)(c).

6 This includes a judicial document authorising his arrest: *ibid* s 78(8).

7 *Ibid* s 78(2)(d). For the meaning of 'category 2 territory' see PARA 1447.

8 *Ibid* s 78(2)(e). For the meaning of 'unlawfully at large' see PARA 1449.

9 *Ibid* s 78(3).

10 *Ibid* s 78(4)(a), (5).

11 *Ibid* s 78(4)(b). For the meaning of 'extradition offences' see PARAS 1451, 1452.

12 *Ibid* s 78(4)(c). Where the interests of justice so allow, the judge may allow these documents to be served at the extradition hearing and, if necessary, grant an adjournment to allow the person facing extradition to consider the impact of the documents on his position: *Government of Germany v Kleinschmidt* [2005] EWHC 1373 (Admin), [2005] 3 All ER 759, DC.

13 2003 Act s 78(6).

14 *Ie* under *ibid* s 79 (see PARA 1456): s 78(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1456. Bars to extradition

1456. Bars to extradition

If the judge is required¹ to proceed with a hearing he must decide whether the person's extradition to the category 2 territory² is barred by reason of the rule against double jeopardy³, extraneous considerations⁴, the passage of time⁵, or hostage-taking considerations⁶. If the judge decides that the person's extradition is barred for any of those reasons, he must order the person's discharge⁷. If the judge decides that the person's extradition is not so barred and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, he must decide whether there is sufficient evidence against the person is sufficient to make a case requiring an answer⁸. If the judge decides that the person's extradition is not so barred and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must decide whether the person was convicted in his presence⁹.

1 le by virtue of the Extradition Act 2003 s 78(7): see PARA 1455.

2 For the meaning of 'category 2 territory' see PARA 1447.

3 2003 Act s 79(1)(a). A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if, and only if, it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction: ss 79(2), 80. For the meaning of 'extradition offences' see PARAS 1451, 1452. See also *Bohning v Government of the United States of America* [2005] EWHC 2613 (Admin), [2006] 3 All ER 394; *R v K* [2007] EWCA Crim 971, [2007] 2 Cr App Rep 187 (see PARA 1412).

4 2003 Act s 79(1)(b). A person's extradition to a category 2 territory is barred by reason of extraneous considerations if, and only if, it appears that (1) the request for his extradition, though purporting to be made on account of the extradition offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions; or (2) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions: ss 79(2), 81. See also *McKinnon v Government of the United States of America* [2007] EWHC 762 (Admin), [2007] All ER (D) 42 (Apr), DC.

5 2003 Act s 79(1)(c). A person's extradition to a category 2 territory is barred by reason of the passage of time if, and only if, it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have committed the extradition offence, where he is accused of its commission, or become unlawfully at large, where he is alleged to have been convicted of it: ss 79(2), 82 (s 82 amended by the Police and Justice Act 2006 Sch 13 para 2(3)). Delay brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot be relied on as a ground for holding it to be either unjust or oppressive to return him: *Gomes v Government of Trinidad and Tobago*; *Goodyer v Government of Trinidad and Tobago* [2009] UKHL 21, [2009] 3 All ER 549. See also *Government of United States of America v Tollman* [2008] EWHC 184 (Admin), [2008] 3 All ER 150.

6 2003 Act s 79(1)(d). A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if, and only if, the territory is a party to the Hostage-taking Convention and it appears that (1) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible; and (2) the act or omission constituting the extradition offence also constitutes an offence under the Taking of Hostages Act 1982 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 468) or an attempt to commit such an offence: 2003 Act ss 79(2), 83(1). The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him: ss 79(2), 83(2). A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of the 2003 Act s 83(1): ss 79(2), 83(3). The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979: 2003 Act ss 79, 83(4).

Sections 80-83 are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

7 2003 Act s 79(3). Section 79(3)-(5) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

8 2003 Act s 79(4). The judge proceeds under s 84 (see PARA 1457): s 79(4). For the meaning of 'unlawfully at large' see PARA 1449.

9 Ibid s 79(5). The judge proceeds under s 85 (see PARA 1458): s 79(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1457. Case where person has not been convicted

1457. Case where person has not been convicted

If the judge is required to proceed under this provision¹ he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him². In deciding that question, the judge may treat a statement made by a person in a document as admissible evidence of a fact if the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders³, and direct oral evidence by the person of the fact would be admissible⁴. In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard to (1) the nature and source of the document⁵; (2) whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic⁶; (3) the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact⁷; (4) the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in the above provision⁸; (5) any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings⁹.

If the judge decides that there is not sufficient evidence to make a case requiring an answer¹⁰ he must order the person's discharge¹¹. If the judge decides there is sufficient evidence, he must decide whether the person's extradition would be incompatible with his Convention rights¹².

1 He under the Extradition Act 2003 s 84 by virtue of s 79: see PARA 1456. If the judge is required to proceed under s 84 and the category 2 territory to which extradition is requested is designated for the purposes of s 84 by order made by the Secretary of State the judge must not decide under s 84(1), and he must decide whether the person's extradition would be incompatible with his Convention rights under s 87 (see PARA 1460): s 84(7). For the meaning of 'category 2 territory' see PARA 1447. As to the territories which have been so designated, see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 3; and PARA 1449. The continued designation of the United States of America as a category 2 territory has been held to be neither unlawful nor irrational: *R (on the application of Norris) v Secretary of State for the Home Department* [2006] EWHC 280 (Admin), [2006] 3 All ER 1011, DC.

2 2003 Act s 84(1). Section 84(1), (5), (6) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 84(2)(a).

4 Ibid s 84(2)(b). A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of s 84(2): s 84(4).

5 Ibid s 84(3)(a).

6 Ibid s 84(3)(b).

7 Ibid s 84(3)(c).

8 He in ibid s 84(1): s 84(3)(d).

9 Ibid s 84(3)(e).

- 10 Ie if the question in ibid s 84(1) is answered in the negative.
- 11 Ibid s 84(5).
- 12 Ie under ibid s 87.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1458. Case where person has been convicted

1458. Case where person has been convicted

If the judge is required to proceed under this provision¹ he must decide whether the person was convicted in his presence². If the person was convicted in his presence, the judge must decide whether the person's extradition would be incompatible with his Convention rights³. If the person was not convicted in his presence, the judge must decide whether the person deliberately absented himself from his trial⁴. If the judge decides that the person deliberately absented himself, he must decide whether the person's extradition would be incompatible with his Convention rights⁵, and if he decides that the person deliberately absented himself, he must decide whether the person would be entitled to a retrial or, on appeal, to a review amounting to a retrial⁶. If the judge decides that the person is entitled to such a retrial or review, he must decide whether there is sufficient evidence against the person is sufficient to make a case requiring an answer⁷, and if he decides there is not sufficient evidence, he must order the person's discharge⁸.

1 Ie under the Extradition Act 2003 s 85 by virtue of s 79(5): see PARA 1456.

2 Ibid s 85(1). Section 85(1), (2), (4), (6), (7) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 Ie under the 2003 Act s 87: see PARA 1460.

4 Ibid s 85(3). The word 'trial' has been adopted to comply with the European Convention on Human Rights art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq) including the right to a hearing and the right to be informed of the nature and cause of an accusation; it would not have been used if a wider view of absence had been intended: *Government of the Republic of Albania v Bleta* [2005] EWHC 475 (Admin), [2005] 3 All ER 351, DC (see also *Atkinson v Supreme Court of Cyprus* [2009] All ER (D) 183 (Jun), DC, and PARA 1413).

5 Ie under the 2003 Act s 87: s 85(4).

6 Ibid s 85(5). The judge must not decide the question in s 85(5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have (1) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required, and (2) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him: s 85(5). The ratification of the European Convention on Human Rights by the state in question is sufficient evidence that the person will receive a fair trial in that state: *An Chen v Government of Romania* [2006] All ER (D) 265 (Jun).

7 Ie under ibid s 86: see PARA 1459.

8 Ibid s 85(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1459. Conviction in person's absence

1459. Conviction in person's absence

If the judge is required to proceed under this provision¹ he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him². The judge may treat a statement made by a person in a document as admissible evidence of a fact if the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders³, and direct oral evidence by the person of the fact would be admissible⁴. In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard (1) to the nature and source of the document⁵; (2) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic⁶; (3) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact⁷; (4) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question⁸; (5) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings⁹.

If the judge decides the evidence against the person is sufficient to make a case requiring an answer¹⁰ he must order the person's discharge¹¹, and if the judge decides that there is sufficient evidence he must decide whether the person's extradition would be incompatible with his Convention rights¹².

1 Ie under the Extradition Act 2003 by virtue of s 85(6): see PARA 1458. If the judge is required to proceed under s 86 and the category 2 territory to which extradition is requested is designated for the purposes of s 86 by order made by the Secretary of State the judge must not decide under s 86(1), and he must decide whether the person's extradition would be incompatible with his Convention rights: s 86(7). For the meaning of 'category 2 territory' see PARA 1447. As to the territories which have been so designated, see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334, art 3; and PARA 1449.

2 2003 Act s 86(1). Section 86(1), (5)-(7) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 86(2)(a).

4 Ibid s 86(2)(b). A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of s 86(2): s 86(4).

5 Ibid s 86(3)(a).

6 Ibid s 86(3)(b).

7 Ibid s 86(3)(c).

8 Ie the question in ibid s 86(1): s 86(3)(d).

9 Ibid s 86(3)(e).

10 Ie if the question in ibid s 86(1) is answered in the affirmative.

11 Ibid s 86(5).

12 le under ibid s 87 (see PARA 1460): s 86(6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1460. Human rights

1460. Human rights

If the judge is required to proceed under this provision¹ he must decide whether the person's extradition would be compatible with the Convention rights². If the judge decides that the person's extradition would not be so compatible, he must order the person's discharge³, and if the judge decides that the person's extradition would be so compatible, he must send the case to the Secretary of State for his decision whether the person is to be extradited⁴.

1 He can proceed under the Extradition Act 2003 by virtue of s 84 (see PARA 1457), 85 (see PARA 1458) or 86 (see PARA 1459). Section 87(1)-(3) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 2003 Act s 87(2). For the meaning of 'Convention rights' see the Human Rights Act 1998 s 1(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 104A.1. See *R (on the application of Bermingham) v Director of the Serious Fraud Office; Bermingham v Government of the United States of America* [2006] EWHC 200 (Admin), [2006] All ER (D) 268 (Feb), DC; *Ahmad v Government of the United States of America* [2006] EWHC 2927 (Admin), [2006] All ER (D) 418 (Nov); and *Khan v Government of the United States of America* [2010] EWHC 1127 (Admin), [2010] All ER (D) 199 (May), DC. The consequences of interference with art 8 rights must be exceptionally serious before they can outweigh importance of extradition, public interest would be seriously damaged if any defendant with family ties and dependencies such as those which bind husband and wife are rendered immune from being extradited to be tried for serious wrongdoing: *Norris v Government of the United States of America* [2010] UKSC 9, [2010] 2 All ER 267. See also PARA 1269.

3 2003 Act s 87(3).

4 Ibid s 87(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1461. Person charged with offence or serving an offence in the United Kingdom

1461. Person charged with offence or serving an offence in the United Kingdom

If at any time in the extradition hearing¹ the judge is informed that the person is charged with an offence in the United Kingdom², the judge must adjourn the extradition hearing until either the charge is disposed of³, the charge is withdrawn⁴, proceedings in respect of the charge are discontinued⁵, or an order is made for the charge to lie on the file⁶.

If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served⁷. If before he adjourns the extradition hearing⁸ the judge has decided⁹ whether the person's extradition is barred by reason of the rule against double jeopardy¹⁰, the judge must decide that question again after the resumption of the hearing¹¹.

If at any time in the extradition hearing the judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom¹², the judge may adjourn the extradition hearing until the sentence has been served¹³.

1 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

2 Extradition Act 2003 s 88(1). Section 88 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 88(2)(a). As to the disposal of a charge see PARA 1415 NOTE 4.

4 Ibid s 88(2)(b).

5 Ibid s 88(2)(c).

6 Ibid s 88(2)(d).

7 Ibid s 88(3).

8 Ie under ibid s 88(2).

9 Ie under ibid s 79: see PARA 1456.

10 As to the rule against double jeopardy see PARA 1412 NOTE 2.

11 2003 Act s 88(4).

12 Ibid s 89(1).

13 Ibid s 89(2). In a case where an extradition hearing is adjourned under the 2003 Act s 89(2) the Magistrates' Courts Act 1980 s 131 (see MAGISTRATES vol 29(2) (Reissue) PARA 716) has effect as if a reference to 28 clear days were a reference to six months: 2003 Act s 89(3)(a) (added by the Police and Justice Act 2006 Sch 13 para 7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1462. Competing extradition claim

1462. Competing extradition claim

If at any time in the extradition hearing¹ the judge is informed that either (1) the Secretary of State has received another valid request for the person's extradition² to a category 2 territory³, the other request has not been disposed of⁴, and the Secretary of State has made an order⁵ for further proceedings on the request under consideration to be deferred until the other request has been disposed of⁶; or (2) a certificate has been issued⁷ in respect of a Part 1 warrant⁸ issued in respect of the person, the warrant has not been disposed of⁹, and the Secretary of State has made an order¹⁰ for further proceedings on the request to be deferred until the warrant has been disposed of¹¹, then the judge must remand the person in custody or on bail¹². If the person is remanded in custody, the appropriate judge may later grant bail¹³.

- 1 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.
- 2 As to a valid request for a person's extradition see PARA 1448.
- 3 For the meaning of 'category 2 territory' see PARA 1447.
- 4 As to the disposal of an extradition request see PARA 1417 NOTE 3.
- 5 Ie under the Extradition Act 2003 s 126(2): see PARA 1492.
- 6 Ibid s 90(1), (2).
- 7 Ie under ibid s 2 (see PARA 1402).
- 8 For the meaning of 'Part 1 warrant' see PARA 1402.
- 9 As to the disposal of a Part 1 warrant see PARA 1432 NOTE 4.
- 10 Ie under the 2003 Act s 179(2): see PARA 1530.
- 11 Ibid s 90(1), (3).
- 12 Ibid s 90(4).
- 13 Ibid s 90(5) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1463. Physical or mental condition

1463. Physical or mental condition

If at any time in the extradition hearing¹ it appears to the judge that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him², the judge must order the person's discharge, or adjourn the extradition hearing until it appears to him that it would no longer be so unjust or oppressive³.

1 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

2 Extradition Act 2003 s 91(1), (2). The presence of a risk to health does not mean that no risk can be taken; each case has to involve a careful assessment of the risk and the danger the exercise would involve: *McCaughey v Government of the United States of America* [2006] All ER (D) 128 (Jan), DC. See also *Government of the United States of America v Tollman* [2008] EWHC 184 (Admin), [2008] 3 All ER 150.

3 2003 Act s 91(1), (3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1464. Case sent to Secretary of State

1464. Case sent to Secretary of State

If the appropriate judge¹ sends a case to the Secretary of State² for his decision whether a person is to be extradited³, the judge must inform the person in ordinary language that he has a right to appeal to the High Court⁴, and that if he exercises the right the appeal will not be heard until the Secretary of State has made his decision⁵. Further, the judge must remand the person in custody or on bail to wait for the Secretary of State's decision⁶, and to wait for his extradition to the territory to which extradition is requested, if the Secretary of State orders him to be extradited⁷. If the person is remanded in custody, the appropriate judge may later grant bail⁸.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ibid s 92(1).

4 Ibid s 92(2)(a). Section 92(2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402

5 2003 Act s 92(2)(b). However, s 92(2) does not apply if the person has consented to his extradition under s 127 (see PARA 1493): s 92(3).

6 Ibid s 92(4)(a).

7 Ibid s 92(4)(b).

8 Ibid s 92(5) (amended by the Police and Justice Act 2006 Sch 13 para 16).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1465. Secretary of State's consideration of case

1465. Secretary of State's consideration of case

If the appropriate judge¹ sends a case to the Secretary of State² for his decision whether a person is to be extradited³, the Secretary of State must decide whether he is prohibited from ordering the person's extradition⁴. If the Secretary of State decides that he is so prohibited, he must order the person's discharge⁵. If the Secretary of State decides that he is not so prohibited, he must order the person to be extradited to the territory to which his extradition is requested unless he is informed that the request has been withdrawn⁶, he makes an order⁷ for further proceedings on the request to be deferred and the person is discharged⁸, or he orders the person's discharge⁹.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ibid s 93(1).

4 Ie under any of ibid s 94 (see PARA 1466), 95 (see PARA 1467), 96, 96A (see PARA 1468): s 93(2) (amended by the Police and Justice Act 2006 Sch 13 para 3(3)). 2003 Act s 93(2)-(4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. In deciding the questions in the 2003 Act s 93(2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period: s 93(5). The permitted period is the period of four weeks starting with the appropriate day: s 93(6) (amended by Police and Justice Act 2006 Sch 13 para 18(2)). In the case of a person who has consented under the 2003 Act s 127 (see PARA 1492) to his extradition, the Secretary of State is not required to wait until the end of the permitted period before ordering the person's extradition, or to consider any representations received after the order is made: s 93(7) (added by Police and Justice Act 2006 Sch 13 para 18(3)).

The appropriate day is determined in accordance with s 102, which applies for the purposes of ss 93, 99 if the appropriate judge sends a case to the Secretary of State under Pt 2 for his decision whether a person is to be extradited: s 102(1). If the person is charged with an offence in the United Kingdom, the appropriate day is the day on which one of either the charge is disposed of, the charge is withdrawn, proceedings in respect of the charge are discontinued, or an order is made for the charge to lie on the file: s 102(2). As to the disposal of a charge see PARA 1415 NOTE 4. If under s 97(3) or 98(2) the Secretary of State defers making a decision until the person has served a sentence, the appropriate day is the day on which the person finishes serving the sentence: s 102(3). If s 126 (see PARA 1492) applies in relation to the request for the person's extradition ('the request concerned'), the appropriate day is the day on which the Secretary of State makes an order under s 126, if the order is for proceedings on the other request to be deferred, or the day on which an order under s 180 (see PARA 1531) is made, if the order under s 126 is for proceedings on the request concerned to be deferred and the order under s 180 is for the proceedings to be resumed: s 102(4). If s 179 (see PARA 1530) applies in relation to the request for the person's extradition, the appropriate day is the day on which the Secretary of State makes an order under s 179, if the order is for proceedings on the warrant to be deferred, or the day on which an order under s 180 is made, if the order under s 179 is for proceedings on the request to be deferred and the order under s 180 is for the proceedings to be resumed: s 102(5).

If more than one of s 102(2)-(5) applies, the appropriate day is the latest of the days found under s 102(2)-(5) which apply: s 102(6). In any other case, the appropriate day is the day on which the judge sends the case to the Secretary of State for his decision whether the person is to be extradited: s 102(7). Section 102 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

5 2003 Act s 93(3).

6 Ibid s 93(4)(a).

7 Ie under ibid s 126(2) (see PARA 1492) or s 179(2) (see PARA 1530).

8 le under ibid s 180 (see PARA 1531): s 93(4)(b).

9 le under ibid s 208 (see PARA 1546): s 93(4)(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1466. Death penalty

1466. Death penalty

The Secretary of State must not order a person's extradition to a category 2 territory¹ if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory². However, this restriction not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death will not be imposed³, or will not be carried out, if imposed⁴.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Extradition Act 2003 s 94(1). Section 94 (1), (2) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402

3 2003 Act s 94(2)(a).

4 Ibid s 94(2)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1467. Speciality

1467. Speciality

The Secretary of State must not order a person's extradition to a category 2 territory¹ if there are no speciality arrangements with the category 2 territory². There are speciality arrangements with a category 2 territory if, and only if, under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if the offence is a specified offence³, or he is first given an opportunity to leave the territory⁴. The specified offences are: (1) the offence in respect of which the person is extradited⁵; (2) an extradition offence⁶ disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed⁷; (3) an extradition offence in respect of which the Secretary of State consents to the person being dealt with⁸; and (4) an offence in respect of which the person waives the right that he would otherwise have not to be dealt with for the offence⁹.

Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally¹⁰. A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters¹¹.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Extradition Act 2003 s 95(1). However, s 95(1) does not apply if the person consented to his extradition under s 127 (see PARA 1493) before his case was sent to the Secretary of State: s 95(2). Section 95(2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 I.e. an offence falling within the 2003 Act s 95(4): s 95(3)(a).

4 Ibid s 95(3)(b). A person is not being 'dealt with' for an offence which is not an extradition offence where, in accordance with the long-standing sentencing practice of a country, the facts of the offence are taken into account: *Welsh v Secretary of State for the Home Department* [2006] EWHC 156 (Admin), [2006] 3 All ER 204, DC.

5 2003 Act s 95(4)(a).

6 For the meaning of 'extradition offences' see PARAS 1451, 1452.

7 2003 Act s 95(4)(b).

8 Ibid s 95(4)(c).

9 Ibid s 95(4)(d).

10 Ibid s 95(5).

11 Ibid s 95(6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1468. Earlier extradition to United Kingdom from other territory and earlier transfer to United Kingdom by International Criminal Court

1468. Earlier extradition to United Kingdom from other territory and earlier transfer to United Kingdom by International Criminal Court

The Secretary of State must not order a person's extradition to a category 2 territory¹ if (1) the person was extradited to the United Kingdom from another territory (the extraditing territory)²; (2) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence³ under consideration⁴; (3) that consent has not been given on behalf of the extraditing territory⁵.

The Secretary of State must not order a person's extradition to a category 2 territory if (a) the person was transferred to the United Kingdom to serve a sentence imposed by the International Criminal Court; (b) under arrangements between the United Kingdom and the Court, the consent of the Presidency of the Court is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence under consideration; (c) that consent has not been given⁶.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Extradition Act 2003 s 96(a). Section 96 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 For the meaning of 'extradition offences' see PARAS 1451, 1452.

4 2003 Act s 96(b).

5 Ibid s 96(c).

6 Ibid s 96A(1) (s 96A added by Police and Justice Act 2006 Sch 13 para 3(4)). The 2003 Act s 96A(1) does not apply if the person has served the sentence imposed by the Court and has subsequently remained voluntarily in the United Kingdom for more than 30 days, or left the United Kingdom and returned to it: s 96A(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1469. Deferral: person charged with offence in United Kingdom

1469. Deferral: person charged with offence in United Kingdom

If the appropriate judge¹ sends a case to the Secretary of State² for his decision whether a person is to be extradited³, and the person is charged with an offence in the United Kingdom⁴, the Secretary of State must not make a decision with regard to the person's extradition until either the charge is disposed of⁵, the charge is withdrawn⁶, proceedings in respect of the charge are discontinued⁷, or an order is made for the charge to lie on the file⁸.

If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served⁹.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ibid s 97(1)(a). Section 97 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 97(1)(b).

5 Ibid s 97(2)(a). As to the disposal of a charge see PARA 1415 NOTE 4.

6 Ibid s 97(2)(b).

7 Ibid s 97(2)(c).

8 Ibid s 97(2)(d).

9 Ibid s 97(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1470. Deferral: person serving sentence in United Kingdom

1470. Deferral: person serving sentence in United Kingdom

If the appropriate judge¹ sends a case to the Secretary of State² for his decision whether a person is to be extradited³, and the person is serving a sentence of imprisonment or another form of detention in the United Kingdom⁴, the Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served⁵.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ibid s 98(1)(a).

4 Ibid s 98(1)(b).

5 Ibid s 98(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1471. Time limit for order for extradition or discharge

1471. Time limit for order for extradition or discharge

If the appropriate judge¹ sends a case to the Secretary of State² for his decision whether a person is to be extradited³, and within the required period⁴ the Secretary of State does not make an order for the person's extradition or discharge⁵, then (1) if the person applies to the appropriate judge to be discharged, the judge must order his discharge⁶; and (2) if before the required period ends the Secretary of State applies to the appropriate judge for it to be extended the judge may make an order accordingly⁷.

1 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ibid s 99(1)(a).

4 The required period is the period of two months starting with the appropriate day: ibid s 99(3). For the meaning of 'the appropriate day' see PARA 1465 NOTE 4.

5 Ibid s 99(1)(b).

6 Ibid s 99(2) (s 99(2) (amended by Police and Justice Act 2006 Sch 13 para 19(2)).

7 2003 Act s 99(4) (amended by 2006 Act Sch 13 para 19(3)). The 2003 Act s 99(4) may apply more than once: s 99(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1472. Information

1472. Information

If the Secretary of State orders a person's extradition¹ he must inform the person of the order², inform him in ordinary language that he has a right of appeal to the High Court³, and inform a person acting on behalf of the category 2 territory⁴ of the order⁵. If the Secretary of State orders a person's extradition and he has received an assurance⁶, he must give the person a copy of the assurance when he informs him⁷ of the order⁸. If the Secretary of State orders a person's discharge, he must inform him of the order⁹, and inform a person acting on behalf of the category 2 territory of the order¹⁰.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141). Section 100 (1), (2), (4) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 2003 Act s 100(1)(a). It suffices for the person's solicitor to be informed: *Mucelli v Government of Albania; Deputy Public Prosecutor in Creteil, France v Moulai* [2009] UKHL 2, [2009] 3 All ER 1035.

3 2003 Act s 100(1)(b). But s 100(1)(b) does not apply if the person has consented to his extradition under s 127 (see PARA 1493): s 100(2).

4 For the meaning of 'category 2 territory' see PARA 1447.

5 2003 Act s 100(1)(c).

6 Ie such as is mentioned in *ibid* s 94(2): see PARA 1466.

7 Ie under *ibid* s 100(1).

8 *Ibid* s 100(3).

9 *Ibid* s 100(4)(a).

10 *Ibid* s 100(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1473. Making of order for extradition or discharge

1473. Making of order for extradition or discharge

An order¹ for a person's extradition² or an order³ for a person's discharge⁴ must be made under the hand of the Secretary of State⁵, a Minister of State⁶, a Parliamentary Under-Secretary of State⁷ or a senior official⁸.

1 Ie under Extradition Act 2003 s 93: see PARA 1465.

2 Ibid s 101(3)(a).

3 Ie under ibid s 93 (see PARA 1465) or 123 (see PARA 1489).

4 Ibid s 101(3)(b).

5 Ibid s 101(1)(a).

6 Ibid s 101(1)(b).

7 Ibid s 101(1)(c).

8 Ibid s 101(1)(d). A senior official is a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service: s 101(4). If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home civil service or diplomatic service, he may by order make such amendments to s 101(4) as appear to him appropriate to preserve, so far as practicable, the effect of s 101(4): s 101(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1474. Appeal where case sent to Secretary of State; court's powers on appeal under section 103

1474. Appeal where case sent to Secretary of State; court's powers on appeal under section 103

If the judge sends a case to the Secretary of State¹ for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision². Such an appeal may be brought on a question of law or fact³. If an appeal is brought before the Secretary of State has decided whether the person is to be extradited the appeal must not be heard until after the Secretary of State has made his decision⁴. If the Secretary of State orders the person's discharge the appeal must not be proceeded with⁵. No appeal may be brought if the Secretary of State has ordered the person's discharge⁶. Notice of an appeal must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person⁷ of the order he has made in respect of the person⁸.

On an appeal⁹, the High Court may allow the appeal¹⁰, direct the judge to decide again a question or questions which he decided at the extradition hearing¹¹, or dismiss the appeal¹². The court may allow the appeal only if either¹³ (1) the judge ought to have decided a question before him at the extradition hearing differently¹⁴, and if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge¹⁵; or (2) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing¹⁶, the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently¹⁷, and if he had decided the question in that way, he would have been required to order the person's discharge¹⁸. If the court allows the appeal it must order the person's discharge¹⁹ and quash the order for his extradition²⁰.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 Ibid s 103(1). However, s 103(1) does not apply if the person consented to his extradition under s 127 (see PARA 1493) before his case was sent to the Secretary of State: s 103(2). The relevant decision is the decision that resulted in the case being sent to the Secretary of State: s 103(3). Section 103 (1), (2), (6), (7) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402. In deciding whether there is dual criminality in extradition, the domestic court must confine itself to the facts alleged in the offence specified in the extradition request: *Edwards v Government of United States of America* [2007] EWHC 1877 (Admin), (2007) Times, 5 October, DC. See also *Taylor v Governor of HMP Wandsworth* [2009] EWHC 1020 (Admin), [2009] All ER (D) 133 (May) (undesirable to reopen final determination of an appeal in case of extradition to category 2 territory).

3 2003 Act s 103(4).

4 Ibid s 103(5).

5 Ibid s 103(6). If notice of an appeal under s 110 (see PARA 1478) against the decision which resulted in the order for the person's discharge is given in accordance with s 110(5), then s 103 (6), (7) do not apply, and no appeal may be brought under s 103 if the High Court has made its decision on the appeal: s 103(8).

6 Ibid s 103(7).

7 Ie under ibid s 100(1) or (4): see PARA 1478.

8 Ibid s 103(9).

9 le an appeal under ibid s 103.

10 Ibid s 104(1)(a). Section 104 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

11 2003 Act s 104(1)(b). For the meaning of 'extradition hearing' see PARAS 1451 NOTE 4. If the judge comes to a different decision on any question that is the subject of a direction under s 104(1)(b) he must order the person's discharge: s 104(6). If the judge comes to the same decision as he did at the extradition hearing on the question that is, or all the questions that are, the subject of a direction under s 104(1)(b) the appeal must be taken to have been dismissed by a decision of the High Court: s 104(7). However, where the judge acts outside the ambit of his statutory powers, his decision cannot be treated as a decision of the High Court: *R (on the application of Okandeji) v Bow Street Magistrates' Court* [2005] EWHC 2925 (Admin), [2006] 1 WLR 675, DC (applied in *Chen v Government of Romania*; *Mitoi v Secretary of State for the Home Department* [2007] EWHC 520 (Admin), [2008] 1 All ER 851, DC). If the court makes a direction under the 2003 Act s 104(1)(b) it must remand the person in custody or on bail: s 104(8) (s 104(8), (9) added by Police and Justice Act 2006 Sch 13 para 8(6)). If the court remands the person in custody it may later grant bail: 2003 Act s 104(9).

12 Ibid s 104(1)(c).

13 Ibid s 104(2).

14 Ibid s 104(3)(a).

15 Ibid s 104(3)(b).

16 Ibid s 104(4)(a).

17 Ibid s 104(4)(b).

18 Ibid s 104(4)(c).

19 Ibid s 104(5)(a).

20 Ibid s 104(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1475. Appeal against discharge at extradition hearing; court's powers on appeal under section 105

1475. Appeal against discharge at extradition hearing; court's powers on appeal under section 105

If at the extradition hearing¹ the judge orders a person's discharge, an appeal to the High Court may be brought on behalf of the category 2 territory² against the relevant decision³. Such an appeal may be brought on a question of law or fact⁴. Notice of an appeal must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made⁵.

On an appeal⁶ the High Court may allow the appeal⁷, direct the judge to decide the relevant question⁸ again⁹, or dismiss the appeal¹⁰. The court may allow the appeal only if either¹¹: (1) the judge ought to have decided the relevant question differently¹², and if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge¹³; or (2) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing¹⁴, the issue or evidence would have resulted in the judge deciding the relevant question differently¹⁵, and if he had decided the question in that way, he would not have been required to order the person's discharge¹⁶. If the court allows the appeal it must quash the order discharging the person¹⁷, remit the case to the judge¹⁸, direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing¹⁹.

1 For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

2 For the meaning of 'category 2 territory' see PARA 1447.

3 Extradition Act 2003 s 105(1). However, s 105(1) does not apply if the order for the person's discharge was under s 122 (see PARA 1488): s 105(2). The relevant decision is the decision which resulted in the order for the person's discharge: s 105(3). Section 105(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 105(4).

5 Ibid s 105(5).

6 Ie an appeal under ibid s 105.

7 Ibid s 106(1)(a).

8 A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge: ibid s 106(2).

9 Ibid s 106(1)(b). If the court makes a direction under s 106(1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing: s 106(7). If the court makes a direction under s 106(1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the High Court: s 106(8). If the court allows the appeal, or makes a direction under s 106(1)(b) it must remand the person in custody or on bail: s 106(9) (s 106(9), (10) added by the Police and Justice Act 2006 Sch 13 para 8(7)). If the court remands the person in custody it may later grant bail: 2003 Act s 106(10).

10 Ibid s 106(1)(c).

11 Ibid s 106(3).

12 Ibid s 106(4)(a).

13 Ibid s 106(4)(b).

14 Ibid s 106(5)(a).

15 Ibid s 106(5)(b).

16 Ibid s 106(5)(c).

17 Ibid s 106(6)(a). Section 106(6) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

18 2003 Act s 106(6)(b).

19 Ibid s 106(6)(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1476. Detention pending conclusion of appeal under section 105

1476. Detention pending conclusion of appeal under section 105

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 107 amended: Constitutional Reform Act 2005 Sch 9 para 81.

If immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory¹ of an intention to appeal², the judge must remand the person in custody or on bail while the appeal is pending³. If the person is remanded in custody, the appropriate judge may later grant bail⁴. Such an appeal ceases to be pending at the earliest of these times: (1) when the proceedings on the appeal are discontinued⁵; (2) when the High Court allows the appeal, makes a direction under a specified provision⁶ or dismisses the appeal, unless, where the appeal is dismissed, the court is immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the Supreme Court⁷; (3) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court against the decision of the High Court on the appeal is granted, if no appeal to the Supreme Court is brought before the end of that period⁸; (4) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal, ignoring any power of a court to grant leave to take a step out of time⁹.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Ie under the Extradition Act 2003 s 105 (see PARA 1475): s 107(1). Section 107(1), (4) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 107(2).

4 Ibid s 107(3) (amended by Police and Justice Act 2006 Sch 13 para 16).

5 2003 Act s 107(4)(a).

6 Ie under ibid s 106(1)(b): see PARA 1475.

7 Ibid s 107(4)(b) (substituted by 2006 Act Sch 13 para 8(8)(a)).

8 2003 Act s 107(4)(c) (amended by 2006 Act Sch 13 para 8(8)(b)).

9 2003 Act s 107(4)(d).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1477. Appeal against extradition order; court's powers on appeal under section 108

1477. Appeal against extradition order; court's powers on appeal under section 108

If the Secretary of State orders a person's extradition¹, the person may appeal to the High Court against the order². Such an appeal may be brought on a question of law or fact³. Notice of an appeal must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person of the order⁴. The High Court may allow or dismiss the appeal⁵. The court may allow the appeal only if⁶ either: (1) the Secretary of State ought to have decided a question before him differently⁷, and if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition⁸; or (2) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time⁹, the issue or information would have resulted in the Secretary of State deciding a question before him differently¹⁰, and if he had decided the question in that way, he would not have ordered the person's extradition¹¹. If the court allows the appeal it must order the person's discharge¹², or quash the order for his extradition¹³.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 Ibid s 108(1). However, s 108(1) does not apply if the person has consented to his extradition under the s 127 (see PARA 1493): s 108(2). Section 108(1), (2) are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 108(3).

4 Ie under ibid s 100(1) (see PARA 1478): s 108(4).

5 Ibid s 109(1). Section 109(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

6 2003 Act s 109(2).

7 Ibid s 109(3)(a).

8 Ibid s 109(3)(b).

9 Ibid s 109(4)(a).

10 Ibid s 109(4)(b).

11 Ibid s 109(4)(c).

12 Ibid s 109(5)(a).

13 Ibid s 109(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1478. Appeal against discharge by Secretary of State; Court's powers on appeal under section 110

1478. Appeal against discharge by Secretary of State; Court's powers on appeal under section 110

If the Secretary of State makes an order for a person's discharge¹, an appeal to the High Court may be brought on behalf of the category 2 territory² against the relevant decision³. Such an appeal may be brought on a question of law or fact⁴. Notice of an appeal must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which⁵ the Secretary of State informs a person acting on behalf of the category 2 territory of the order⁶. The High Court may allow or dismiss the appeal⁷. The court may allow the appeal only if⁸ either (1) the Secretary of State ought to have decided a question before him differently⁹, and if he had decided the question in the way he ought to have done, he would have ordered the person's extradition¹⁰; or (2) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time¹¹, the issue or information would have resulted in the Secretary of State deciding a question before him differently¹², and if he had decided the question in that way, he would have ordered the person's extradition¹³. If the court allows the appeal it must quash the order discharging the person¹⁴, and order the person's extradition¹⁵. If the court allows the appeal it must remand the person in custody or on bail¹⁶. If the court remands the person in custody it may later grant bail¹⁷.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 For the meaning of 'category 2 territory' see PARA 1447.

3 2003 Act s 110(1). However, s 110(1) does not apply if the order for the person's discharge was under s 123 (see PARA 1489): s 110(2). The relevant decision is the decision which resulted in the order for the person's discharge: s 110(3). Section 110(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 110(4).

5 Ie under *ibid* s 110(4): see PARA 1478.

6 *Ibid* s 110(5).

7 *Ibid* s 111(1).

8 *Ibid* s 111(2).

9 *Ibid* s 111(3)(a).

10 *Ibid* s 111(3)(b).

11 *Ibid* s 111(4)(a).

12 *Ibid* s 111(4)(b).

13 *Ibid* s 111(4)(c).

14 *Ibid* s 111(5)(a). Section 111(5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

- 15 2003 Act s 111(5)(b).
- 16 Ibid s 111(6) (added by the Police and Justice Act 2006 Sch 13 para 8(9)).
- 17 2003 Act s 111(7) (added by the Police and Justice Act 2006 Sch 13 para 8(9)).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1479. Detention pending conclusion of appeal under section 110

1479. Detention pending conclusion of appeal under section 110

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 112 amended: Constitutional Reform Act 2005 Sch 9 para 81.

In a case where the Secretary of State orders the person's discharge¹ (1) the order made by the appropriate judge under 'the remand order'² remains in force until the end of the period of three days beginning with the day on which the person's discharge is ordered; (2) if within that period the Secretary of State is informed in writing on behalf of the category 2 territory³ of an intention to appeal under a specified provision⁴ the remand order remains in force while the appeal is pending⁵; and (3) an appeal under the specified provision⁶ ceases to be pending at the earliest of these times (a) when the proceedings on the appeal are discontinued; (b) when the High Court allows the appeal, or dismisses the appeal, unless, where the appeal is dismissed, the court is immediately informed on behalf of the category territory of an intention to apply for leave to appeal to the Supreme Court; (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court against the decision of the High Court on the appeal is granted, if no appeal to the Supreme Court is brought before the end of that period; (d) where there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal, ignoring any power of a court to grant leave to take a step out of time⁷.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 Ie under *ibid* s 92(4): see PARA 1464.

3 For the meaning of 'category 2 territory' see PARA 1447.

4 Ie under *ibid* s 110: see PARA 1478.

5 *Ibid* s 112(1), (2) (s 112 substituted by Police and Justice Act 2006 Sch 13 para 8(10)). However, if the person is remanded in custody under the 2003 Act s 92(4), the appropriate judge may grant bail: s 112(3).

6 Ie under *ibid* s 110.

7 *Ibid* s 112(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1480. Appeal to High Court: time limit for start of hearing

1480. Appeal to High Court: time limit for start of hearing

Rules of court must prescribe the period ('the relevant period') within which the High Court must begin to hear an appeal¹, and the High Court must begin to hear the appeal before the end of the relevant period². The High Court may extend the relevant period if it believes it to be in the interests of justice to do so³. The High Court's power extend the relevant period⁴ may be exercised even after the end of the relevant period⁵.

1 Ie under the Extradition Act 2003 s 103 (see PARA 1474), 105 (see PARA 1475) or 110 (see PARA 1478): s 113(1).

2 Ibid s 113(2). If s 113(2) is not complied with and the appeal is under 103 or 108, the appeal must be taken to have been allowed by a decision of the High Court, the person whose extradition has been ordered must be taken to have been discharged by the High Court, the order for the person's extradition must be taken to have been quashed by the High Court: s 113(5). If s 113(2) is not complied with and the appeal is under s 105 or 110 the appeal must be taken to have been dismissed by a decision of the High Court: s 113(6).

3 Ibid s 113(3). Section 113(3) may apply more than once: s 113(3).

4 Ie under ibid s 113(3).

5 Ibid s 113(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1481. Appeal to Supreme Court; powers of Supreme Court on appeal under section 114

1481. Appeal to Supreme Court; powers of Supreme Court on appeal under section 114

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 ss 114, 115 amended: Constitutional Reform Act 2005 Sch 9 para 81.

An appeal lies to the Supreme Court from a decision of the High Court on an appeal under certain specified provisions¹. Such an appeal lies at the instance of the person whose extradition is requested², or a person acting on behalf of the category 2 territory³. An appeal lies only with the leave of the High Court or the Supreme Court⁴. Leave to appeal must not be granted unless the High Court has certified that there is a point of law of general public importance involved in the decision⁵, and it appears to the court granting leave that the point is one which ought to be considered by the Supreme Court⁶. An application to the High Court for leave to appeal must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it⁷. An application to the Supreme Court for leave to appeal under this provision must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal⁸. If leave to appeal is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted⁹. The High Court may grant bail to a person appealing under this provision or applying for leave to appeal, against the dismissal of his appeal under specified provisions¹⁰. An order of the Supreme Court which provides for an application for leave to appeal to be determined¹¹ may direct that the decision of the committee is taken on behalf of the House¹².

The Supreme Court may allow or dismiss an appeal¹³. If the person whose extradition is requested brings an appeal, and the Supreme Court allows the appeal¹⁴, the Supreme Court must order the person's discharge¹⁵; and quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal¹⁶, or to allow an appeal¹⁷. If (1) the High Court allows an appeal¹⁸ by the person whose extradition is requested or dismisses an appeal¹⁹ by a person acting on behalf of the category 2 territory²⁰, (2) a person acting on behalf of the category 2 territory brings an appeal²¹ against the decision of the High Court²², and (3) the Supreme Court allows the appeal²³, the Supreme Court must quash the order discharging the person made by the High Court²⁴ or by the Secretary of State²⁵, and order the person to be extradited to the category 2 territory²⁶.

If (a) the High Court dismisses an appeal²⁷ against a decision made by the judge at the extradition hearing²⁸, (b) a person acting on behalf of the category 2 territory brings an appeal²⁹ against the decision of the High Court³⁰, and (c) the Supreme Court allows the appeal³¹, the Supreme Court must quash the order of the judge discharging the person whose extradition is requested³², remit the case to the judge³³, or direct him to proceed as he would have been required to do if he had decided the relevant question³⁴ differently at the extradition hearing³⁵.

1 lie under the Extradition Act 2003 ss 103 (see PARA 1474), 105 (see PARA 1475), 108 (see PARA 1477) or 110 (see PARA 1478): s 114(1). Section 114(1) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence (added by the Police and Justice Act 2006 Sch 13 para 8(9)). For the meaning of 'Part 1 warrant' see PARA 1402. If (1) on an appeal under the 2003 Act s 103 or s 108 the High Court orders the person's discharge; and (2) immediately after it does so, the court is informed on behalf of the category 2 territory of an intention to appeal under s 114, (a) the court must remand the person in custody or on bail while the appeal is pending; (b) if the court remands the person in custody it may later grant bail; (c) an appeal under s 114 ceases to be

pending at the earliest of these times (i) when the proceedings on the appeal are discontinued; (ii) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court against the decision of the High Court on the appeal under s 103 or s 108 is granted, if no appeal to the Supreme Court is brought before the end of that period; (iii) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal, ignoring any power of a court to grant leave to take a step out of time: s 115A(1)-(4) (added by the Police and Justice Act 2006 Sch 13 para 8(13)). For the meaning of 'category 2 territory' see PARA 1447.

2 2003 Act s 114(2)(a).

3 Ibid s 114(2)(b).

4 Ibid s 114(3).

5 Ibid s 114(4)(a).

6 Ibid s 114(4)(b).

7 Ibid s 114(5).

8 Ibid s 114(6).

9 Ibid s 114(7). If s 114(7) is not complied with the appeal must be taken to have been brought, and the appeal must be taken to have been dismissed by the Supreme Court immediately after the end of the period permitted under that provision: s 114(8). For the purposes of s 114(8)(b), any power of a court to extend the period permitted for bringing the appeal and or any power of a court to grant leave to take a step out of time must be ignored: s 114(9).

10 Ie under ibid s 114: s 114(10) (s 114(10) substituted by the Police and Justice Act 2006 Sch 13 para 8(11)). The specified provisions are the 2003 Act s 103 (see PARA 1474) or s 108 (see PARA 1477). The Appellate Jurisdiction Act 1876 s 5 (composition of Supreme Court for hearing and determination of appeals) (partly repealed by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016) applies in relation to an appeal under the 2003 Act s 114 or an application for leave to appeal under s 114 as it applies in relation to an appeal under the 1876 Act: 2003 Act s 114(11). 1876 Act repealed as from 1 October 2009 (see SI 2009/1604): Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5.

11 Ie determined by a committee constituted in accordance with the Appellate Jurisdiction Act 1876 s 5.

12 2003 Act s 114(12).

13 Ie an appeal brought under ibid s 114: s 115(1).

14 Ibid s 115(2).

15 Ibid s 115(3)(a). Section 115 (3), (5), (7) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

16 Ie under the 2003 Act s 103 (see PARA 1474) or 108 (see PARA 1477).

17 Ie under ibid s 110 (see PARA 1478): s 115(3)(b).

18 Ie under ibid s 103 or 108.

19 Ie under ibid s 110.

20 Ibid s 115(4)(a).

21 Ie under ibid s 114.

22 Ibid s 115(4)(b).

23 Ibid s 115(4)(c).

24 Ie under ibid s 104(5) (see PARA 1474) or 109(5) (see PARA 1477).

25 Ie under ibid Pt 2 (ss 69-141): s 115(5)(a).

26 Ibid s 115(5)(b). In a case where s 115(5) applies, the Supreme Court must remand, in custody or on bail, the person whose extradition is requested: s 115(9) (s 115(9), (10) added by the 2006 Act Sch 13 para 8(12)). If the Supreme Court remands the person in custody the High Court may later grant bail: 2003 Act s 115(10).

27 Ie under ibid s 105: see PARA 1475.

28 Ibid s 115(6)(a). For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

29 Ie under ibid s 114.

30 Ibid s 115(6)(b).

31 Ibid s 115(6)(c).

32 Ibid s 115(7)(a).

33 Ibid s 115(7)(b).

34 A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge: ibid s 115(8).

35 Ibid s 115(7)(c). In a case where s 115(7) applies, the Supreme Court must remand, in custody or on bail, the person whose extradition is requested: s 115(9). If the Supreme Court remands the person in custody the High Court may later grant bail: s 115(10).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1482. Appeals: general

1482. Appeals: general

A decision of the judge or the Secretary of State¹ may be questioned in legal proceedings only by means of an appeal².

1 le under the Extradition Act 2003 Pt 2 (ss 69-141).

2 le an appeal under *ibid* Pt 2 (ss 69-141): s 116.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1483. Extradition where no appeal

1483. Extradition where no appeal

The following applies if the Secretary of State orders a person's extradition to a category 2 territory¹, and no notice of an appeal² is given before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person³ that he has ordered his extradition⁴. The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with the day on which the Secretary of State makes the order⁵. If this requirement is not complied with and the person applies to the appropriate judge⁶ to be discharged, the judge must order his discharge, unless reasonable cause is shown for the delay⁷.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

2 Ie under ibid s 103 (see PARA 1474) or 108 (see PARA 1477).

3 Ie under ibid s 100(1); see PARA 1478.

4 Ibid s 117(1)(b). The following must be ignored for the purposes of s 117(1)(b): (1) any power of a court to extend the period permitted for giving notice of appeal; (2) any power of a court to grant leave to take a step out of time: s 117(4). Section 117(1), (2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

5 2003 Act s 117(2).

6 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

7 2003 Act s 117(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1484. Extradition following appeal

1484. Extradition following appeal

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 118 amended: Constitutional Reform Act 2005 Sch 9 para 81.

If there is an appeal to the High Court¹ against a decision or order relating to a person's extradition to a category 2 territory², and the effect of the decision of the relevant court³ on the appeal is that the person is to be extradited there⁴, the person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final⁵, or the day on which proceedings on the appeal are discontinued⁶. The decision of the High Court on the appeal becomes final: (1) when the period permitted for applying to the High Court for leave to appeal to the Supreme Court ends, if there is no such application⁷; (2) when the period permitted for applying to the Supreme Court for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the Supreme Court for leave to appeal⁸; (3) when the Supreme Court refuses leave to appeal to it⁹; (4) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Supreme Court is granted, if no such appeal is brought before the end of that period¹⁰. The decision of the Supreme Court on the appeal becomes final when it is made¹¹.

1 le under the Extradition Act 2003 s 103 (see PARA 1474) or 108 (see PARA 1477) or 110 (see PARA 1478).

2 Ibid s 118(1)(a). For the meaning of 'category 2 territory' see PARA 1447.

3 The relevant court is the High Court, if there is no appeal to the Supreme Court against the decision of the High Court on the appeal, or the Supreme Court, if there is such an appeal: ibid s 118(3).

4 Ibid s 118(1)(b).

5 Ibid s 118(2)(a). If s 118(2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay: s 118(7). See *Mustafa v Government of the United States of America* [2008] EWHC 1357 (Admin), [2008] 3 All ER 1069, DC, (a delay in extradition proceedings is legitimate where charges for criminal activities in the United Kingdom are brought before a domestic court). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14. The 2003 Act s 118 (2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

6 2003 Act s 118(2)(b).

7 Ibid s 118(4)(a). The following must be ignored for the purposes of s 118(4): (1) any power of a court to extend the period permitted for applying for leave to appeal; (2) any power of a court to grant leave to take a step out of time: s 118(5). Where a point of law of general public importance has not been certified, there can be no permitted period during which to apply to the Supreme Court: *R (on the application of Wood) v Secretary of State for the Home Department* [2007] All ER (D) 460 (Jul).

8 2003 Act s 118(4)(b).

9 Ibid s 118(4)(c).

10 Ibid s 118(4)(d).

11 Ibid s 118(6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1485. Undertaking in relation to person serving sentence in United Kingdom

1485. Undertaking in relation to person serving sentence in United Kingdom

If the Secretary of State orders a person's extradition to a category 2 territory¹, and the person is serving a sentence of imprisonment or another form of detention in the United Kingdom either in custody or on licence², the Secretary of State may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 2 territory in terms specified by him³. The terms which may be specified by the Secretary of State in relation to a person serving a sentence of imprisonment or another form of detention in the United Kingdom in custody who is accused in a category 2 territory of the commission of an offence include terms that the person be kept in custody⁴ until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 2 territory⁵, and that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings⁶. The terms which may be specified by the Secretary of State in relation to a person serving a sentence of imprisonment or another form of detention in the United Kingdom on licence who is accused in a category 2 territory of the commission of an offence include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for the offence and any other offence in respect of which he is permitted to be dealt with in the category 2 territory⁷. The terms which may be specified by the Secretary of State in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for the offence⁸, and any other offence in respect of which he is permitted to be dealt with in the category 2 territory⁹.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

2 Ibid s 119(1) (amended by the Police and Justice Act 2006 Sch 13 para 13(2)). The 2003 Act s 119 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 119(2). Section 119(6), (7) applies if the Secretary of State makes an order for extradition subject to a condition under s 119(2): s 119(5). If the Secretary of State does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the High Court to be discharged, the court must order his discharge: s 119(6). If the Secretary of State receives the undertaking before the end of that period: (1) in a case where s 117 (see PARA 1483) applies, the required period for the purposes of s 117(2) is 28 days starting with the day on which the Secretary of State receives the undertaking; (2) in a case where s 118 (see PARA 1484) applies, the required period for the purposes of s 118(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final, within the meaning of s 118, or, if later, the day on which the Secretary of State receives the undertaking: s 119(7).

4 Ibid s 119(3) (amended by the 2006 Act Sch 13 para 13(3)).

5 2003 Act s 119(3)(a).

6 Ibid s 119(3)(b).

7 Ibid s 119(3A) (added by the 2006 Act Sch 13 para 13(4)).

8 2003 Act s 119(4)(a). For the meaning of 'unlawfully at large' see PARA 1449.

9 Ibid s 119(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1486. Extradition following deferral for competing claim

1486. Extradition following deferral for competing claim

If (1) an order is made¹ for a person to be extradited to a category 2 territory² in pursuance of a request for his extradition³; (2) before the person is extradited to the territory an order is made⁴ for the person's extradition in pursuance of the request to be deferred⁵; and (3) the appropriate judge⁶ makes an order⁷ for the person's extradition in pursuance of the request to cease to be deferred⁸, then (a) in a case where there is no appeal⁹, the required period¹⁰ is 28 days starting with the day on which the order is made¹¹, and (b) in a case where there has been an appeal¹², the required period¹³ is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final¹⁴.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 For the meaning of 'category 2 territory' see PARA 1447.

3 2003 Act s 120(1)(a).

4 Ie under ibid s 126(2) (see PARA 1492) or s 179(2) (see PARA 1530).

5 Ibid s 120(1)(b).

6 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

7 Ie under 2003 Act s 181(2): see PARA 1532.

8 Ibid s 120(1)(c).

9 Ie where ibid 117 (see PARA 1483) applies.

10 Ie for the purposes of ibid s 117(2).

11 Ie the order under ibid s 181(2) is made: s 120(2).

12 Ie where ibid s 118 (see PARA 1484) applies.

13 Ie for the purposes of ibid s 118(2).

14 Ie final within the meaning of ibid s 118 or, if later, the day on which the order under s 181(2) is made: s 120(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1487. Asylum claim

1487. Asylum claim

If a person whose extradition is requested makes an asylum claim¹ at any time in the relevant period², and an order is made³ for the person to be extradited in pursuance of the request⁴, the person must not be extradited in pursuance of the request before the asylum claim is finally determined⁵. If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim⁶. If the Secretary of State rejects the asylum claim, the claim is finally determined (1) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State's decision on the claim⁷; (2) when the period permitted for appealing against the Secretary of State's decision on the claim ends, if there is such a right but there is no such appeal⁸; (3) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal⁹.

However, an appeal against the Secretary of State's decision on an asylum claim is not finally determined at any time when a further appeal or an application for leave to bring a further appeal has been instituted and has not been finally determined or withdrawn or abandoned¹⁰, or may be brought¹¹.

1 'Asylum claim' has the meaning given by the Nationality, Immigration and Asylum Act 2002 s 113(1) (see PARA 1480); Extradition Act 2003 s 216(7).

2 Ibid s 121(1)(a). The relevant period is the period starting when a certificate is issued under s 70 (see PARA 1448) in respect of the request, and ending when the person is extradited in pursuance of the request: s 121(2).

3 Ibid under ibid Pt 2 (ss 69-141).

4 Ibid s 121(1)(b).

5 Ibid s 121(3). Sections 117 (see PARA 1483), 118 (see PARA 1484) have effect subject to s 121(3): s 121(3).

6 2003 Act s 121(4).

7 Ibid s 121(5)(a).

8 Ibid s 121(5)(b).

9 Ibid s 121(5)(c). The possibility of an appeal out of time with leave must be ignored for the purposes of s 121(5), (6): s 121(8).

10 Ibid s 121(6)(a).

11 Ibid s 121(6)(b). The remittal of an appeal is not a final determination for the purposes of s 121(6): s 121(7).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1488. Withdrawal of request before end of extradition hearing

1488. Withdrawal of request before end of extradition hearing

If at any time in the relevant period¹ the appropriate judge is informed by the Secretary of State that a request for a person's extradition has been withdrawn², the judge must order the person's discharge³. If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable⁴.

1 The relevant period is the period starting when the person first appears or is brought before the appropriate judge following his arrest under the Extradition Act 2003 Pt 2 (ss 69-141), and ending when the judge orders the person's discharge or sends the case to the Secretary of State for his decision whether the person is to be extradited: s 122(2). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

2 Ibid s 122(1). Section 122(1), (3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 122(3).

4 Ibid s 122(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1489. Withdrawal of request after case sent to Secretary of State

1489. Withdrawal of request after case sent to Secretary of State

If at any time in the relevant period¹ the Secretary of State is informed that a request for a person's extradition has been withdrawn², the Secretary of State must order that person's discharge³.

1 The relevant period is the period starting when the judge sends the case to the Secretary of State for his decision whether the person is to be extradited, and ending when the person is extradited in pursuance of the request or discharged Extradition Act 2003 s 123(2).

2 Ibid s 123(1). Section 123 (1), (3) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 123(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1490. Withdrawal of request while appeal to High Court pending

1490. Withdrawal of request while appeal to High Court pending

The following applies if at any time in the relevant period¹ the High Court is informed by the Secretary of State that a request for a person's extradition has been withdrawn². If the appeal is an appeal where the case is sent to the Secretary of State³, or is against an extradition order⁴, the court must order the person's discharge⁵ and, if the Secretary of State has ordered his extradition, quash the order for his extradition⁶. If the appeal is against discharge at the extradition hearing⁷ or is against discharge by the Secretary of State⁸, the court must dismiss the appeal⁹. If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable¹⁰.

1 The relevant period is the period starting when notice of an appeal to the court is given by the person whose extradition is requested or by a person acting on behalf of the category 2 territory to which his extradition is requested, and ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal: Extradition Act 2003 s 124(2). For the meaning of 'category 2 territory' see PARA 1447.

2 Ibid s 124(1). Section 124(1), (3), (4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 Ie under the 2003 Act s 103: see PARA 1474.

4 Ie under ibid s 108: see PARA 1477.

5 Ibid s 124(3)(a).

6 Ibid s 124(3)(b).

7 Ie under ibid s 105: see PARA 1475. For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

8 Ie under ibid s 110: see PARA 1478.

9 Ibid s 124(4).

10 Ibid s 124(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1491. Withdrawal of request while appeal to Supreme Court pending

1491. Withdrawal of request while appeal to Supreme Court pending

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 125 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following applies if at any time in the relevant period¹ the Supreme Court is informed by the Secretary of State that a request for a person's extradition has been withdrawn². If the appeal is brought by the person whose extradition is requested the Supreme Court must order the person's discharge³, or, in a case where the appeal was against a decision of the High Court to dismiss an appeal where the case is sent to the Secretary of State⁴ or is against an extradition order⁵, quash the order for his extradition⁶. If the appeal is brought by a person acting on behalf of the category 2 territory the Supreme Court must dismiss the appeal⁷. If the person whose extradition is requested is not before the Supreme Court at the time it orders his discharge, the Supreme Court must inform him of the order as soon as practicable⁸.

1 The relevant period is the period starting when leave to appeal to the Supreme Court is granted to the person whose extradition is requested or a person acting on behalf of the category 2 territory to which his extradition is requested, and ending when proceedings on the appeal are discontinued or the Supreme Court makes its decision on the appeal: Extradition Act 2003 s 125(2). For the meaning of 'category 2 territory' see PARA 1447.

2 Ibid s 125(1). Section 125(1), (3), (4) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 125(3)(a).

4 Ie under ibid s 103: see PARA 1474.

5 Ie under ibid s 108: see PARA 1477.

6 Ibid s 125(3).

7 Ibid s 125(4).

8 Ibid s 125(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1492. Competing extradition requests

1492. Competing extradition requests

If (1) the Secretary of State receives a valid request for a person's extradition¹ to a category 2 territory², (2) the person is in the United Kingdom³, and (3) before the person is extradited in pursuance of the request or discharged, the Secretary of State receives another valid request for the person's extradition⁴, he may (a) if neither of the requests has been disposed of, order proceedings, or further proceedings, on one of the requests to be deferred until the other one has been disposed of⁵, or (b) if an order for his extradition in pursuance of the request under consideration has been made, order the person's extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of⁶. In applying these provisions, the Secretary of State must take account in particular of (i) the relative seriousness of the offences concerned⁷; (ii) the place where each offence was committed, or was alleged to have been committed⁸; (iii) the date when each request was received⁹; (iv) whether, in the case of each offence, the person is accused of its commission but not alleged to have been convicted, or is alleged to be unlawfully at large after conviction¹⁰.

1 As to a valid request for a person's extradition see PARA 1448.

2 Extradition Act 2003 s 126(1)(a). For the meaning of 'category 2 territory' see PARA 1447. Section 126 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 126(1)(b).

4 Ibid s 126(1)(c).

5 Ibid s 126(2)(a).

6 Ibid s 126(2)(b).

7 Ibid s 126(3)(a).

8 Ibid s 126(3)(b).

9 Ibid s 126(3)(c).

10 Ibid s 126(3)(d). For the meaning of 'unlawfully at large' see PARA 1449.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1493. Consent to extradition: general

1493. Consent to extradition: general

A person arrested under a warrant¹ may consent to his extradition to the category 2 territory² to which his extradition is requested³. A person arrested under a provisional warrant⁴ may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence⁵. Such consent must be given in writing⁶, and is irrevocable⁷. Consent which is given by a person before his case is sent to the Secretary of State for the Secretary of State's decision whether he is to be extradited must be given before the appropriate judge⁸. Consent which is given in any other case must be given to the Secretary of State⁹. A person may not give his consent before the appropriate judge unless (1) he is legally represented¹⁰ before the appropriate judge at the time he gives consent¹¹; or (2) he has been informed of his right to apply for legal aid¹² and has had the opportunity to apply for legal aid, but he has refused or failed to apply¹³, he has applied for legal aid but his application has been refused¹⁴, or he was granted legal aid but the legal aid was withdrawn¹⁵.

1 Issued under the Extradition Act 2003 s 71: see PARA 1449.

2 For the meaning of 'category 2 territory' see PARA 1447.

3 2003 Act s 127(1). Section 127(1), (2) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 For the meaning of 'provisional warrant' see PARA 1450.

5 2003 Act s 127(2).

6 Ibid s 127(3)(a).

7 Ibid s 127(3)(b).

8 2003 Act s 127(4). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

9 Ibid s 127(5).

10 For the purposes of ibid s 127(6) a person is to be treated as legally represented before the appropriate judge if, and only if, he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge: s 127(9).

11 Ibid s 127(6)(a).

12 In ibid s 127(7) 'legal aid' means a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service: s 127(8)(a).

13 Ibid s 127(6)(b), (7)(a).

14 Ibid s 127(6)(b), (7)(b).

15 Ibid s 127(6)(b), (7)(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1494. Consent to extradition before case sent to Secretary of State

1494. Consent to extradition before case sent to Secretary of State

The following applies if a person gives his consent to extradition¹ to the appropriate judge². If the judge has not fixed a date³ on which the extradition hearing⁴ is to begin he is not required to do so⁵. If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding⁶. The judge must send the case to the Secretary of State for his decision whether the person is to be extradited⁷. The person must be taken to have waived any right he would have, apart from the consent, not to be dealt with in the category 2 territory⁸ for an offence committed before his extradition⁹.

1 Ie under the Extradition Act 2003 s 127: see PARA 1493.

2 Ibid s 128(1). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

3 Ie under ibid s 75 (see PARA 1453) or 76 (see PARA 1453).

4 For the meaning of 'extradition hearing' see PARAS 1451 NOTE 4.

5 2003 Act s 128(2). Section 128(2), (3), (5) is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

6 Ie under the 2003 Act ss 78-91: see PARAS 1455-1463.

7 2003 Act s 128(4).

8 For the meaning of 'category 2 territory' see PARA 1447.

9 2003 Act s 128(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1495. Consent to other offence being dealt with

1495. Consent to other offence being dealt with

If a person is extradited to a category 2 territory¹ and the Secretary of State receives a valid request for his consent² to the person being dealt with in the territory for an offence other than the offence in respect of which he was extradited³, the Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁴, and must decide whether the offence is an extradition offence⁵. If the Secretary of State decides that the offence is not an extradition offence he must refuse his consent⁶, and if he decides that the offence is an extradition offence he must decide whether the appropriate judge⁷ would send the case to him for his decision whether the person was to be extradited⁸ if the person were in the United Kingdom⁹, and the judge were required to proceed¹⁰ in respect of the offence for which the Secretary of State's consent is requested¹¹. If the Secretary of State decides that the appropriate judge would not send the case to him, he must refuse his consent¹². If the Secretary of State decides that the appropriate judge would send the case to him, he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited¹³. If the Secretary of State decides that the person's extradition in respect of the offence would be so prohibited, he must refuse his consent¹⁴, and if he decides the person's extradition would not be so prohibited, he may give his consent¹⁵.

¹ I.e. in accordance with the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

² A request for consent is valid if it is made by an authority which is an authority of the territory and which the Secretary of State believes has the function of making requests for the consent referred to in the 2003 Act s 129(1)(b) in that territory: s 129(2). Section 129 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/31501. For the meaning of 'Part 1 warrant' see PARA 1402.

³ 2003 Act s 129(1)(b).

⁴ Ibid s 129(3).

⁵ Ibid s 129(4). For the meaning of 'extradition offences' see PARAS 1451, 1452.

⁶ Ibid s 129(5).

⁷ For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

⁸ I.e. under the 2003 Act ss 79-91: see PARAS 1456-1463.

⁹ Ibid s 129(6)(a).

¹⁰ I.e. under ibid s 79: see PARA 1456.

¹¹ Ibid s 129(6)(b).

¹² Ibid s 129(7).

¹³ I.e. under ibid s 94 (see PARA 1466), 95 (see PARA 1467) or 96 (see PARA 1468): s 129(8).

¹⁴ Ibid s 129(9).

¹⁵ Ibid s 129(10).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1496. Consent to further extradition to category 2 territory

1496. Consent to further extradition to category 2 territory

If a person is extradited to a category 2 territory¹ ('the requesting territory') and the Secretary of State receives a valid request for his consent² to the person's extradition to another category 2 territory for an offence other than the offence in respect of which he was extradited³, the Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁴. The Secretary of State must decide whether the offence is an extradition offence⁵ in relation to the category 2 territory referred to above⁶. If the Secretary of State decides that the offence is not an extradition offence, he must refuse his consent⁷. If the Secretary of State decides that the offence is not an extradition offence, he must decide whether the appropriate judge⁸ would send the case to him for his decision whether the person was to be extradited⁹ if the person were in the United Kingdom¹⁰, and the judge were required to proceed¹¹ in respect of the offence for which the Secretary of State's consent is requested¹². If the Secretary of State decides that the appropriate judge would not send the case to him, he must refuse his consent¹³. If the Secretary of State decides that the appropriate judge would send the case to him, he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited¹⁴. If the Secretary of State decides that the person's extradition in respect of the offence would be so prohibited, he must refuse his consent¹⁵, and if he decides that that the person's extradition in respect of the offence would not be so prohibited, he may give his consent¹⁶.

¹ I.e. in accordance with the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

² A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in the 2003 Act s 130(1)(b) in that territory: s 130(2). Section 130 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

³ 2003 Act s 130(1)(b).

⁴ Ibid s 130(3).

⁵ For the meaning of 'extradition offences' see PARAS 1451, 1452.

⁶ I.e. in the 2003 Act s 130(1)(b).

⁷ Ibid s 130(5).

⁸ For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

⁹ I.e. under the 2003 Act ss 79-91: see PARAS 1456-1463.

¹⁰ Ibid s 130(6)(a).

¹¹ I.e. under ibid s 79: see PARA 1456.

¹² Ibid s 130(6)(b).

¹³ Ibid s 130(7).

¹⁴ I.e. under ibid s 94 (see PARA 1466), 95 (see PARA 1467) or 96 (see PARA 1468).

15 Ibid s 130(9).

16 Ibid s 130(10).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1497. Consent to further extradition to category 1 territory

1497. Consent to further extradition to category 1 territory

If a person is extradited to a category 2 territory¹ ('the requesting territory') and the Secretary of State receives a valid request for his consent² to the person's extradition to a category 1 territory³ for an offence other than the offence in respect of which he was extradited⁴, the Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so⁵, and must decide whether the offence is an extradition offence⁶ in relation to the category 1 territory⁷. If the Secretary of State decides the offence is not such an extradition offence, he must refuse his consent⁸. If the Secretary of State decides that the offence is such an extradition offence, he must decide whether the appropriate judge⁹ would order the person's extradition¹⁰ if the person were in the United Kingdom¹¹, and the judge were required to proceed¹² in respect of the offence for which the Secretary of State's consent is requested¹³. If the Secretary of State decides that the appropriate judge would order the person's extradition, he must give his consent¹⁴, and if he decides that the appropriate judge would not order the person's extradition, he must refuse his consent¹⁵.

¹ *Ie* in accordance with the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

² A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in the 2003 Act s 131(1)(b) in that territory: s 131(2). Section 131 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

³ For the meaning of 'category 1 territory' see PARA 1401.

⁴ 2003 Act s 131(1)(b).

⁵ *Ibid* s 131(3).

⁶ *Ie* within the meaning given by *ibid* s 64 (see PARA 1406): s 131(4).

⁷ *Ibid* s 131(4).

⁸ *Ibid* s 131(5).

⁹ For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

¹⁰ *Ie* under the 2003 Act ss 11-25 (see PARAS 1412-1418): s 131(6).

¹¹ *Ibid* s 131(6)(a).

¹² *Ie* under *ibid* s 11 (see PARA 1412): s 131(6)(b).

¹³ *Ibid* s 131(6)(b).

¹⁴ *Ibid* s 131(7).

¹⁵ *Ibid* s 131(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1498. Return of person to serve remainder of sentence

1498. Return of person to serve remainder of sentence

If a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited to a category 2 territory¹ and the person is returned to the United Kingdom to serve the remainder of his sentence, and the person is not yet entitled to be released from detention pursuant to his sentence, whether on licence or otherwise², the person is liable to be detained in pursuance of his sentence³, and if he is at large he must be treated as being unlawfully at large⁴. Time during which the person was not in the United Kingdom as a result of his extradition does not count as time served by him as part of his sentence⁵.

1 Ibid in accordance with the Extradition Act 2003 Pt 2 (ss 69-141). For the meaning of 'category 2 territory' see PARA 1447.

2 Ibid s 132(1)(a)-(c) (s 132(c) added by the Police and Justice Act 2006 Sch 13 para 14). The 2003 Act s 132 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 132(2).

4 Ibid s 132(3). For the meaning of 'unlawfully at large' see PARA 1449.

5 Ibid s 132(4). However, s 132(4) does not apply if the person was extradited for the purpose of being prosecuted for an offence, and the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the category 2 territory: s 132(5). In a case falling within s 132(5), time during which the person was not in the United Kingdom as a result of his extradition counts as time served by him as part of his sentence if, and only if, it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the territory: s 132(6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1499. Costs where extradition ordered

1499. Costs where extradition ordered

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 133 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following applies in relation to a person whose extradition is requested¹. In a case where an order for the person's extradition is made², the appropriate judge³ may make such order as he considers just and reasonable with regard to the costs to be paid by the person⁴. In a case where the High Court is taken⁵ to have dismissed an appeal⁶, the judge who decides the question that is, or all the questions that are, the subject of a direction⁷ may make such order as he considers just and reasonable with regard to the costs to be paid by the person⁸. In any other case where the High Court dismisses an appeal⁹, it may make such order as it considers just and reasonable with regard to the costs to be paid by the person¹⁰. In a case where the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court¹¹, if the application is made by the person¹² or the Supreme Court dismisses an appeal¹³, if the appeal is brought by the person¹⁴, the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person¹⁵. An order for costs¹⁶ must specify their amount¹⁷, and may name the person to whom they are to be paid¹⁸.

1 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

2 Ie under *ibid* Pt 2: s 133(1)(a).

3 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

4 2003 Act s 133(2).

5 Ie by virtue of *ibid* s 104(7): see PARA 1474.

6 Ie under *ibid* s 103 (see PARA 1474) or 108 (see PARA 1477): s 133(6).

7 Ie under *ibid* s 104(1)(b): see PARA 1474.

8 *Ibid* s 133(3).

9 Ie under *ibid* s 103 or 108: s 133(1)(b).

10 *Ibid* s 133(4).

11 Ie under *ibid* s 114: see PARA 1481.

12 *Ibid* s 133(1)(c).

13 Ie under *ibid* s 114.

14 *Ibid* s 133(1)(d).

15 *Ibid* s 133(5).

16 Ie under *ibid* s 133.

17 *Ibid* s 133(6)(a).

18 *Ibid* s 133(6)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1500. Costs where discharge ordered

1500. Costs where discharge ordered

As from 1 October 2009 (see SI 2009/1604) Extradition Act 2003 s 134 amended: Constitutional Reform Act 2005 Sch 9 para 81.

The following applies if any of the following occurs in relation to a person whose extradition to a category 2 territory¹ is requested²: (1) an order for the person's discharge is made³; (2) the person is taken to be discharged⁴; (3) the High Court dismisses an appeal⁵; (4) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court⁶, if the application is made on behalf of the category 2 territory⁷; (5) the Supreme Court dismisses an appeal⁸, if the appeal is brought on behalf of the category 2 territory⁹.

In a case falling within head (1) above, an order¹⁰ in favour of the person may be made by (a) the appropriate judge¹¹, if the order for the person's discharge is made by him or by the Secretary of State¹²; (b) the High Court, if the order for the person's discharge is made by it¹³; (c) the Supreme Court, if the order for the person's discharge is made by it¹⁴. In a case falling within head (2) above, the appropriate judge may make an order¹⁵ in favour of the person¹⁶. In a case falling within head (3), (4) or (5) above, the court by which the application or appeal is dismissed may make an order¹⁷ in favour of the person¹⁸.

An order¹⁹ in favour of a person is an order for a payment of the appropriate amount²⁰ to be made to the person out of money provided by Parliament²¹. However, if the judge or court making such an order is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount²², the judge or court must assess what amount would in his or its opinion be just and reasonable²³, and specify that amount in the order as the appropriate amount²⁴. Unless it is inappropriate for the person to recover the full amount²⁵, the appropriate amount (i) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount²⁶; (ii) must be determined in accordance with regulations made by the Lord Chancellor, in any other case²⁷.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Ie under the Extradition Act 2003 Pt 2 (ss 69-141).

3 Ie under ibid Pt 2: s 134(1)(a). The Prosecution of Offences Act 1985 s 20(1), (3) (regulations for carrying Pt 2 into effect) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058) apply in relation to the 2003 Act s 134 as the Prosecution of Offences Act 1985 s 20(1), (3) apply in relation to Pt 2: 2003 Act s 135(1). As so applied, the 1985 Act s 20(1), (3) have effect as if an order under the 2003 Act s 134(5) were an order under the 1985 Act Pt 2 for a payment to be made out of central funds: 2003 Act s 135(2).

4 Ie under ibid Pt 2: s 134(1)(b).

5 Ie under ibid s 105 (see PARA 1475) or 110 (see PARA 1478): s 134(1)(c).

6 Ie under ibid s 114: see PARA 1481.

7 Ibid s 134(1)(d).

8 Ie under ibid s 114.

9 Ibid s 134(1)(e).

10 Ie under ibid s 134(5).

11 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

12 2003 Act s 134(2)(a).

13 Ibid s 134(2)(b).

14 Ibid s 134(2)(c).

15 Ie under ibid s 134(5).

16 Ibid s 134(3).

17 Ie under ibid s 134(5).

18 Ibid s 134(4).

19 Ie under ibid s 134(5).

20 The appropriate amount is such amount as the judge or court making the order under ibid s 134(5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under Pt 2: s 134(6).

21 Ibid s 134(5).

22 Ie mentioned in ibid s 134(6).

23 Ibid s 134(7)(a).

24 Ibid s 134(7)(b).

25 Ie unless ibid s 134(7) applies.

26 Ibid s 134(8)(a).

27 Ibid s 134(8)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/12. EXTRADITION TO CATEGORY 2 TERRITORIES/1501. Persons serving sentences outside territory where convicted

1501. Persons serving sentences outside territory where convicted

The following applies if (1) a request is made for a person's extradition to a category 2 territory¹ and the request contains the statement referred to below²; or (2) a provisional warrant³ for a person's arrest is sought on behalf of a category 2 territory and the information laid before the justice contains the statement referred to below⁴. The statement is one that the person (a) is alleged to be unlawfully at large from a prison in one territory ('the imprisoning territory') in which he was serving a sentence after conviction of an offence specified in the request by a court in another territory ('the convicting territory')⁵; and (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence⁶.

If the category 2 territory is either the imprisoning territory or the convicting territory, certain modifications apply to specified provisions⁷, and if the category 2 territory is the imprisoning territory certain modifications apply to different provisions⁸.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 Ie in the Extradition Act 2003 s 136(2): s 136(1)(a). Section 136 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 For the meaning of 'provisional warrant' see PARA 1450.

4 Ie in the 2003 Act s 136(2): s 136(1)(b).

5 Ibid s 136(2)(a).

6 Ibid s 136(2)(b).

7 Ie (1) ibid s 70(3) (see PARA 1448) has effect as if the reference to the statement referred to in s 70(4) were a reference to the statement referred to in s 136(2); (2) s 73(1) (see PARA 1450) has effect as if the reference to a person within s 173(2) were a reference to the person referred to in s 136(1)(b): s 136(3).

8 Ie (1) ibid ss 71(2)(a) (see PARA 1449), 73(3)(a) (see PARA 1450), 78(4)(b) (see PARA 1455) have effect as if 'an extradition offence' read 'an extradition offence in relation to the convicting territory'; (2) ss 74(8)(a) (see PARA 1450) and 127(2) (see PARA 1493) have effect as if 'the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence' read 'the imprisoning territory'; (3) s 74(11)(b) (see PARA 1450) has effect as if 'the category 2 territory' read 'the imprisoning territory'; (4) s 78(2)(e) (see PARA 1455) has effect as if 'the category 2 territory' read 'the convicting territory'; (5) s 85(5) (see PARA 1458) has effect as if after 'entitled' there were inserted 'in the convicting territory'; (6) s 119(4) (see PARA 1485) has effect as if 'a category 2 territory' read 'the convicting territory' and as if 'the category 2 territory' in both places read 'the convicting territory'; (7) s 138(1) (see PARA 1452) has effect as if 'a category 2 territory' read 'the convicting territory'; (8) s 138(2), (3), (4), (5), (7) have effect as if 'the category 2 territory' read 'the convicting territory': s 136(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1502. Extradition offences

13. EXTRADITION TO THE UNITED KINGDOM

1502. Extradition offences

Conduct constitutes an extradition offence in relation to the United Kingdom if the conduct occurs in the United Kingdom¹ and the conduct is punishable under the law of the relevant part of the United Kingdom² with imprisonment or another form of detention for a term of 12 months or a greater punishment³. Conduct also constitutes an extradition offence in relation to the United Kingdom if it occurs outside the United Kingdom⁴ and it constitutes an extra-territorial offence punishable under the law of the relevant part of the United Kingdom with imprisonment or another form of detention for a term of 12 months or a greater punishment⁵. However, these provisions do not apply in relation to conduct of a person if he has been convicted by a court in the United Kingdom of the offence constituted by the conduct⁶, and he has been sentenced for the offence⁷. Conduct also constitutes an extradition offence in relation to the United Kingdom if (1) the conduct occurs in the United Kingdom⁸ and a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the United Kingdom in respect of the conduct⁹; or (2) the conduct occurs outside the United Kingdom¹⁰, the conduct constitutes an extra-territorial offence¹¹ and a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the United Kingdom in respect of the conduct¹².

1 Extradition Act 2003 s 148(1)(a). Section 148 (1)-(5) apply for the purposes of ss 142-147 (see PARAS 1502-1507): s 148(8). Section 143 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 The relevant part of the United Kingdom is the part of the United Kingdom in which the relevant proceedings are taking place: 2003 Act s 148(6). The relevant proceedings are the proceedings in which it is necessary to decide whether conduct constitutes an extradition offence: s 148(7).

3 Ibid s 148(1)(b).

4 Ibid s 148(2)(a).

5 Ibid s 148(2)(b).

6 Ibid s 148(3)(a) (amended by the Police and Justice Act 2006 Sch 13 para 2(6)).

7 2003 Act s 148(3)(b).

8 Ibid s 148(4)(a).

9 Ibid s 148(4)(b).

10 Ibid s 148(5)(a).

11 Ibid s 148(5)(b).

12 Ibid s 148(5)(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1503. Issue of Part 3 warrant

1503. Issue of Part 3 warrant

The appropriate judge¹ may issue a Part 3 warrant in respect of a person if a constable or an appropriate person² applies to the judge for a Part 3 warrant³ and the following conditions are satisfied⁴. The first condition is that there are reasonable grounds for believing that the person has committed an extradition offence, and⁵ a domestic warrant⁶ has been issued in respect of the person⁷. The second condition is that there are reasonable grounds for believing that the person is unlawfully at large after conviction of an extradition offence by a court in the United Kingdom⁸, and either a domestic warrant has been issued in respect of the person or the person may, if unlawfully at large as mentioned above be arrested without a warrant⁹.

A Part 3 warrant is an arrest warrant which contains a statement as described below¹⁰ and a certificate as described below¹¹. The statement is either: (1) a statement that (a) the person in respect of whom the warrant is issued is accused in the United Kingdom of the commission of an extradition offence specified in the warrant¹², and (b) the warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of being prosecuted for the offence¹³; or (2) a statement that (a) the person in respect of whom the warrant is issued has been convicted of an extradition offence specified in the warrant by a court in the United Kingdom¹⁴, and (b) the warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence¹⁵. The certificate is one certifying (i) whether the conduct constituting the extradition offence specified in the warrant falls within the European framework list¹⁶; (ii) whether the offence is an extra-territorial offence¹⁷; (iii) what is the maximum punishment that may be imposed on conviction of the offence or, if the person has been sentenced for the offence, what sentence has been imposed¹⁸.

1 The appropriate judge a District Judge (Magistrates' Courts), a justice of the peace or a judge entitled to exercise the jurisdiction of the Crown Court: Extradition Act 2003 s 149(1)(a). Section 149 applies for the purposes of ss 142-147 (see PARAS 1502-1507): s 149(2). Section 142 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 An appropriate person is a person of a description specified in an order made by the Secretary of State for the purposes of the 2003 Act s 142: s 142(9). The Extradition Act 2003 (Part 3 Designation) Order 2003, SI 2003/3335 (amended by SI 2005/1127), designates as appropriate persons the Director of the Revenue and Customs Prosecutions Office, specified members of the Serious Fraud Office, the Director of Public Prosecutions; certain Crown Prosecutors, certain counsel and solicitors instructed by the Crown Prosecution Service.

3 2003 Act s 142(1)(a).

4 Ibid s 142(1)(b) (amended by Police and Justice Act 2006 Sch 13 para 21(1)).

5 2003 Act s 142(2)(a) (s 142(2) substituted by Police and Justice Act 2006 Sch 13 para 21(2)). For the meaning of 'extradition offence' see PARAS 1406, 1407.

6 A domestic warrant is a warrant for the arrest or apprehension of a person which is issued under any of the following: (1) the Criminal Justice Act 1967 s 72 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 510); (2) the Bail Act 1976 s 7 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1200); (3) the Magistrates' Courts Act 1980 s 1 (see MAGISTRATES vol 29(2) (Reissue) PARAS 522, 523); 2003 Act s 142(8) (substituted by Police and Justice Act 2006 Sch 13 para 22).

7 2003 Act s 142(2)(b).

8 Ibid s 142(2A)(a).

9 Ibid s 142(2A)(b).

10 Ibid s 142(3)(a).

11 Ibid s 142(3)(b).

12 Ibid s 142(4)(a).

13 Ibid s 142(4)(b).

14 Ibid s 142(5)(a) (amended by the Police and Justice Act 2006 Sch 13 para 1(3)).

15 2003 Act s 142(5)(b).

16 Ibid s 142(6)(a). The European framework list is the list of conduct set out in Sch 2: s 215(1). The conduct which falls within the European framework list must be taken for the purposes of text head (i) to include conduct which constitutes an attempt, conspiracy or incitement to carry out conduct falling within the list, or aiding, abetting, counselling or procuring the carrying out of conduct falling within the list: s 142(7). As to category 1 territories not applying the European Framework Decision on the European arrest warrant and the surrender procedures between member states adopted by the Council of the European Union on 13 June 2002 to old cases see s 155A (added by the 2006 Act Sch 13 para 24). See further Serious Crime Act 2007 Sch 6 para 46 (references to common law offence of incitement).

17 2003 Act s 142(6)(b).

18 Ibid s 142(6)(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1504. Undertaking in relation to person serving sentence

1504. Undertaking in relation to person serving sentence

The following provision applies if (1) a Part 3 warrant¹ is issued in respect of a person²; (2) the person is serving a sentence of imprisonment or another form of detention in a category 1 territory³; (3) the person's extradition to the United Kingdom from the category 1 territory in pursuance of the warrant is made subject to a condition that an undertaking is given on behalf of the United Kingdom with regard to his treatment in the United Kingdom or his return to the category 1 territory, or both⁴.

The Secretary of State may give an undertaking to a person acting on behalf of the category 1 territory with regard to either or both of (a) the treatment in the United Kingdom of the person in respect of whom the warrant is issued⁵; or (b) the return of that person to the category 1 territory⁶. The terms which may be included by the Secretary of State in such an undertaking in relation to a person accused in the United Kingdom of the commission of an offence include terms that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the United Kingdom⁷, and terms that the person be returned to the category 1 territory to serve the remainder of his sentence on the conclusion of those proceedings⁸. The terms which may be included by the Secretary of State in such an undertaking in relation to a person who has been convicted of an offence by a court in the United Kingdom include terms that the person be returned to the category 1 territory to serve the remainder of his sentence after serving any sentence imposed on him in the United Kingdom⁹.

1 For the meaning of 'Part 3 warrant' see PARA 1503.

2 Extradition Act 2003 s 143(1)(a). Section 143 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 143(1)(b). For the meaning of 'category 1 territory' see PARA 1401.

4 Ibid s 143(1)(c).

5 2003 Act s 143(2)(a).

6 Ibid s 143(2)(b).

7 Ibid s 143(3)(a).

8 Ibid s 143(3)(b).

9 Ibid s 143(4)(a) (amended by the Police and Justice Act 2006 Sch 13 para 2(5)).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1505. Return to extraditing territory to serve sentence

1505. Return to extraditing territory to serve sentence

The following provision applies if (1) a Part 3 warrant¹ is issued in respect of a person²; (2) the warrant states that it is issued with a view to his extradition to the United Kingdom for the purpose of being prosecuted for an offence³; (3) he is extradited to the United Kingdom from a category 1 territory⁴ in pursuance of the warrant⁵; (4) he is extradited on the condition that, if he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, he must be returned to the category 1 territory to serve the sentence⁶; (5) he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it⁷.

The person must be returned to the category 1 territory to serve the sentence as soon as is reasonably practicable after the sentence is imposed⁸. If this requirement is complied with the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes⁹. If the requirement is not complied with and the person applies to the appropriate judge¹⁰ to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay¹¹.

1 For the meaning of 'Part 3 warrant' see PARA 1503.

2 Extradition Act 2003 s 144(1)(a). Section 144 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 144(1)(b).

4 For the meaning of 'category 1 territory' see PARA 1401.

5 2003 Act s 144(1)(c).

6 Ibid s 144(1)(d).

7 Ibid s 144(1)(e).

8 Ibid s 144(2).

9 Ibid s 144(3).

10 For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

11 2003 Act s 144(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1506. Service of sentence in territory executing Part 3 warrant

1506. Service of sentence in territory executing Part 3 warrant

If (1) a Part 3 warrant¹ is issued in respect of a person²; (2) the certificate contained in the warrant certifies that a sentence has been imposed³; (3) an undertaking is given on behalf of a category 1 territory⁴ that the person will be required to serve the sentence in the territory⁵; (4) on the basis of the undertaking the person is not extradited to the United Kingdom from the category 1 territory⁶, then the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes⁷.

1 For the meaning of 'Part 3 warrant' see PARA 1503.

2 Extradition Act 2003 s 145(1)(a). Section 145 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 145(1)(b).

4 For the meaning of 'category 1 territory' see PARA 1401.

5 2003 Act s 145(1)(c).

6 Ibid s 145(1)(d).

7 Ibid s 145(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1507. Dealing with person for other offences

1507. Dealing with person for other offences

The following provision applies if a person is extradited to the United Kingdom from a category 1 territory¹ in pursuance of a Part 3 warrant². The person may be dealt with in the United Kingdom for an offence committed before his extradition only if the offence is one described in any of heads (1) to (6) below³, or the condition set out below is satisfied⁴. The offences are: (1) the offence in respect of which the person is extradited⁵; (2) an offence disclosed by the information provided to the category 1 territory in respect of that offence⁶; (3) an extradition offence⁷ in respect of which consent to the person being dealt with is given on behalf of the territory in response to a request made by the appropriate judge⁸; (4) an offence which is not punishable with imprisonment or another form of detention⁹; (5) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal¹⁰; (6) an offence in respect of which the person waives the right that he would have¹¹ not to be dealt with for the offence¹². The condition is that the person has been given an opportunity to leave the United Kingdom and he has not done so before the end of the permitted period¹³, or he has done so before the end of the permitted period and has returned to the United Kingdom¹⁴.

1 For the meaning of 'category 1 territory' see PARA 1401.

2 Extradition Act 2003 s 146(1). For the meaning of 'Part 3 warrant' see PARA 1503. Section 146 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 146(2)(a).

4 Ibid s 146(2)(b). If a person is extradited to the United Kingdom from a category 1 territory in pursuance of a Part 3 warrant, and the person consented to his extradition to the United Kingdom in accordance with the law of the category 1 territory, then s 146(2) does not apply if the conditions in s 147(3) or (4) are satisfied: s 147(1), (2). The conditions under s 147(3) are that under the law of the category 1 territory, the effect of the person's consent is to waive his right under s 146(2), and the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law. The conditions under s 147(4) are that (1) under the law of the category 1 territory, the effect of the person's consent is not to waive his right under s 146(2); (2) the person has expressly waived his right under s 146(2) in accordance with that law; (3) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law; (4) the person has not revoked the waiver of his right under s 146(2) in accordance with that law, if he is permitted to do so under that law.

5 Ibid s 146(3)(a).

6 Ibid s 146(3)(b). See *R v Seddon* [2009] EWCA Crim 483, [2009] 1 WLR 2342, [2009] All ER (D) 116 (Mar) .

7 For the meaning of 'extradition offence' see PARAS 1406, 1407.

8 2003 Act s 146(3)(c) (amended by the Police and Justice Act 2006 Sch 13 para 23).

9 2003 Act s 146(3)(d).

10 Ibid s 146(3)(e).

11 Ie the right he would have but for ibid s 146(4).

12 Ibid s 146(3)(f).

13 Ibid s 146(4)(a). The permitted period is 45 days starting with the day on which the person arrives in the United Kingdom: s 146(5).

14 Ibid s 146(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1508. Dealing with person for other offences: Commonwealth countries etc; other category 2 territories

1508. Dealing with person for other offences: Commonwealth countries etc; other category 2 territories

The following provision applies if (1) a person is extradited to the United Kingdom from a category 2 territory¹ under corresponding law of the territory², and (2) the territory is a Commonwealth country, a British overseas territory or the Hong Kong Special Administrative Region of the People's Republic of China³.

The person may be dealt with in the United Kingdom for an offence⁴ committed before his extradition only if the offence is one described in any of heads (a) to (c) below⁵, or on condition that the protected period⁶ has ended⁷. The offences are: (a) the offence in respect of which the person is extradited⁸; (b) a lesser offence⁹ disclosed by the information provided to the category 2 territory in respect of that offence¹⁰; (c) an offence in respect of which consent to the person being dealt with is given by or on behalf of the relevant authority¹¹.

If a person is extradited to the United Kingdom from a category 2 territory under corresponding law of the territory¹², and the territory is not one falling within head (2) above¹³, the person may be dealt with in the United Kingdom for an offence¹⁴ committed before his extradition only if the offence is one described in any of heads (i) to (iii) below¹⁵, or the condition set out below is satisfied¹⁶. The offences are: (i) the offence in respect of which the person is extradited¹⁷; (ii) an offence disclosed by the information provided to the category 2 territory in respect of that offence¹⁸; (iii) an offence in respect of which consent to the person being dealt with is given on behalf of the territory¹⁹. The condition is that the person has returned to the territory from which he was extradited²⁰, or the person has been given an opportunity to leave the United Kingdom²¹.

1 For the meaning of 'category 2 territory' see PARA 1447.

2 The law corresponding to the Extradition Act 2003 Pt 2 (ss 69-141): s 150(1)(a). Sections 150, 151 are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 150(1)(b).

4 A person is dealt with in the United Kingdom for an offence if he is tried there for it or he is detained with a view to trial there for it: *ibid* s 150(8).

5 *Ibid* s 150(2)(a).

6 The protected period is 45 days starting with the first day after his extradition to the United Kingdom on which the person is given an opportunity to leave the United Kingdom: *ibid* s 150(7).

7 *Ibid* s 150(2)(b), (6).

8 *Ibid* s 150(3)(a).

9 The offence is in relation to another offence if the maximum punishment for it is less severe than the maximum punishment for the other offence: *ibid* s 150(4).

10 *Ibid* s 150(3)(b).

11 *Ibid* s 150(3)(c). The relevant authority is (1) if the person has been extradited from a Commonwealth country, the government of the country; (2) if the person has been extradited from a British overseas territory,

the person administering the territory; (3) if the person has been extradited from the Hong Kong Special Administrative Region of the People's Republic of China, the government of the Region: s 150(5).

12 le law corresponding to ibid Pt 2: s 151(1)(a).

13 Ibid s 151(1)(b).

14 A person is dealt with in the United Kingdom for an offence if he is tried there for it or he is detained with a view to trial there for it: s 151(5).

15 Ibid s 151(2)(a).

16 Ibid s 151(2)(b).

17 Ibid s 151(3)(a).

18 Ibid s 151(3)(b).

19 Ibid s 151(3)(c).

20 Ibid s 151(4)(a).

21 Ibid s 151(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1509. Remission of punishment for other offences

1509. Remission of punishment for other offences

If a person is extradited to the United Kingdom from a category 1 territory¹ under corresponding law of the territory², or a category 2 territory³ under corresponding law of the territory⁴, before his extradition he has been convicted of an offence in the United Kingdom⁵, and he has not been extradited in respect of that offence⁶, then the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes⁷.

1 For the meaning of 'category 1 territory' see PARA 1401.

2 The law corresponding to the Extradition Act 2003 Pt 1 (ss 1-68A) (see PARAS 1401-1446): s 152(1)(a)(i). Section 152 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 For the meaning of 'category 2 territory' see PARA 1447.

4 The law corresponding to the 2003 Act Pt 2 (ss 69-141): s 152(1)(a)(ii).

5 Ibid s 152(1)(b).

6 Ibid s 152(1)(c).

7 Ibid s 152(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1510. Return of person acquitted or not tried

1510. Return of person acquitted or not tried

If (1) a person is accused in the United Kingdom of the commission of an offence¹; (2) the person is extradited to the United Kingdom in respect of the offence from a category 1 territory² under corresponding law of the territory³, or a category 2 territory⁴ under corresponding law of the territory⁵; and (3) either of the conditions set out below is satisfied⁶, then the Secretary of State must arrange for him to be sent back, free of charge and with as little delay as possible, to the territory from which he was extradited to the United Kingdom in respect of the offence⁷.

The conditions are: (a) that proceedings against the person for the offence are not begun before the end of the required period, which is six months starting with the day on which the person arrives in the United Kingdom on his extradition⁸, and before the end of the period of three months starting immediately after the end of the required period the person asks the Secretary of State to return him to the territory from which he was extradited⁹; (b) that at his trial for the offence the person is acquitted or is discharged¹⁰, and before the end of the period of three months starting immediately after the date of his acquittal or discharge the person asks the Secretary of State to return him to the territory from which he was extradited¹¹.

1 Extradition Act 2003 s 153(1)(a). Section 153 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 For the meaning of 'category 1 territory' see PARA 1401.

3 Ie law corresponding to the 2003 Act Pt 1 (ss 1-68A) (see PARAS 1401-1446): s 153(1)(b)(i).

4 For the meaning of 'category 2 territory' see PARA 1447.

5 Ie law corresponding to the 2003 Act Pt 2 (ss 69-141): s 153(1)(b)(ii).

6 Ibid s 153(1)(c).

7 Ibid s 153(5).

8 Ibid s 153(2)(a).

9 2003 Act s 153(2)(b).

10 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (see MENTAL HEALTH): 2003 Act s 153(3)(a), (4).

11 Ibid s 153(3)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1511. Restriction on bail where undertaking given by Secretary of State

1511. Restriction on bail where undertaking given by Secretary of State

If the Secretary of State has given an undertaking in connection with the person's extradition to the United Kingdom¹, and the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in the United Kingdom for an offence², a court, judge or justice of the peace may grant bail to the person in the proceedings only if the court, judge or justice of the peace considers that there are exceptional circumstances which justify it³.

1 Extradition Act 2003 s 154(1)(a). Section 154 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 2003 Act s 154(1)(b).

3 Ibid s 154(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/13. EXTRADITION TO THE UNITED KINGDOM/1512. Service personnel

1512. Service personnel

The Secretary of State may by order provide for the certain provisions¹ to have effect with specified modifications in relation to a case where the person whose extradition is sought or ordered is subject to service law².

1 Ie the Extradition Act 2003 Pt 3 (ss 142-154: see PARAS 1502-1507).

2 Ibid s 155 (amended by the Armed Forces Act 2006 Sch 16 para 204).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1513. Search and seizure warrants

14. POLICE POWERS

1513. Search and seizure warrants

A search and seizure warrant is a warrant authorising a constable to enter and search the premises¹ specified in the application for the warrant, and to seize and retain material found there².

A justice of the peace may, on an application made to him by a constable, issue a search and seizure warrant if he is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled³. Those requirements are that there are reasonable grounds for believing that (1) the offence specified in the application has been committed by the person so specified⁴; (2) the person is in the United Kingdom or is on his way to the United Kingdom⁵; (3) the offence is an extradition offence⁶; (4) there is material on premises specified in the application⁷; (5) any of the conditions in heads (a) to (d) below is satisfied⁸. Those conditions are: (a) that it is not practicable to communicate with a person entitled to grant entry to the premises⁹; (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material¹⁰; (c) that entry to the premises will not be granted unless a warrant is produced¹¹; (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them¹².

The application for a search and seizure warrant must state that (i) the extradition of a person specified in the application is sought¹³; (ii) the warrant is sought in relation to premises specified in the application¹⁴; (iii) the warrant is sought in relation to material, or material of a description, specified in the application¹⁵; (iv) that material, or material of that description, is believed to be on the premises¹⁶.

If the application states that the extradition of the person is sought by a category 1 territory¹⁷, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence which is specified in the application¹⁸ and which is an extradition offence¹⁹. If the application states that the extradition of the person is sought by a category 2 territory²⁰, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence which is specified in the application²¹, and which is an extradition offence²².

1 'Premises' includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation, and any tent or movable structure: Police and Criminal Evidence Act 1984 s 23 (applied by the Extradition Act 2003 s 174(1), (5)(a), (9)).

2 Ibid s 156(5). The material which may be seized and retained is material which (1) would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom for the offence specified in the application for the warrant, on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom, and (2) does not consist of or include items subject to legal privilege, excluded material or special procedure material: s 156(6). The relevant part of the United Kingdom is the part of the United Kingdom where the justice of the peace exercises jurisdiction: s 156(7). For the meaning of 'items of legal privilege', 'excluded material' and 'special procedure material' see the 1984 Act ss 10, 11, 14 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 873, 875, 876 (ss 10, 11, 14 applied by the 2003 Act s 174(1), (3)(a), (4)(a), (6)(a), (9)). Section 156 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 156(1).

4 Ibid s 156(8)(a).

5 Ibid s 156(8)(b).

6 Ie if ibid s 156(3) applies, an extradition offence within the meaning given by s 64 (see PARA 1406) or, if s 156(4) applies an extradition offence within the meaning given by s 137 (see PARA 1451): s 156(8)(c).

7 Ie material which falls within ibid s 156(6) see NOTE 2: s 156(8)(d).

8 Ibid s 156(8)(e).

9 Ibid s 156(9)(a).

10 Ie the material referred to in ibid s 156(8)(d) (see TEXT head (4)): s 156(9)(d).

11 Ibid s 156(9)(c).

12 Ibid s 156(9)(d).

13 Ie under ibid Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512): s 156(2)(a).

14 Ibid s 156(2)(b).

15 Ibid s 156(2)(c).

16 Ibid s 156(2)(d).

17 Ie if the application is sought under ibid Pt 1. For the meaning of 'category 1 territory' see PARA 1401.

18 Ibid s 156(3)(a).

19 Ie within the meaning given by ibid s 64 (see PARA 1406): s 156(3)(b).

20 Ie if the application is sought under ibid Pt 2. For the meaning of 'category 2 territory' see PARA 1447.

21 Ibid s 156(4)(a).

22 Ie within the meaning given by ibid s 137 (see PARA 1451): s 156(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1514. Production orders; requirements for making of production order

1514. Production orders; requirements for making of production order

A production order is an order either (1) requiring the person the application for the order specifies as appearing to be in possession or control of special procedure material¹ or excluded material² to produce it to a constable, within the period stated in the order³, for him to take away⁴, or (2) requiring that person to give a constable access to the special procedure material or excluded material within the period stated in the order⁵. Production orders have effect as if they were orders of the court⁶.

A circuit judge may, on an application made to him by a constable, make a production order if he is satisfied that the requirements for the making of a production order are fulfilled⁷. Those requirements are that there must be reasonable grounds for believing that (a) the offence specified in the application has been committed by the person so specified⁸; (b) the person is in the United Kingdom or is on his way to the United Kingdom⁹; (c) the offence is an extradition offence¹⁰; (d) there is material which consists of or includes special procedure material or excluded material on premises specified in the application¹¹; (e) the material would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom¹² for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom)¹³. Further, it must appear that other methods of obtaining the material have been tried without success¹⁴ or have not been tried because they were bound to fail¹⁵, and it must be in the public interest that the material should be produced or that access to it should be given¹⁶.

The application for a production order must state that (i) the extradition of a person specified in the application is sought¹⁷; (ii) the order is sought in relation to premises¹⁸ specified in the application¹⁹; (iii) the order is sought in relation to material, or material of a description, specified in the application²⁰; (iv) the material is special procedure material or excluded material²¹; (v) a person specified in the application appears to be in possession or control of the material²².

If the application states that the extradition of the person is sought by a category 1 territory²³, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence which is specified in the application²⁴, and which is an extradition offence²⁵. If the application states that the extradition of the person is sought by a category 2 territory²⁶, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence which is specified in the application²⁷, and which is an extradition offence²⁸.

1 For the meaning of 'special procedure material' see the Police and Criminal Evidence Act 1984 s 14 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 876 (s 14 applied by the Extradition Act 2003 s 174(1), (6)(a), (9)).

2 For the meaning of 'excluded material' see the 1984 Act s 11 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875 (s 11 applied by the 2003 Act s 174(1), (3)(a), (9)).

3 The period stated in a production order must be a period of seven days starting with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer period would be appropriate: *ibid* s 157(6). Sections 157, 158 are modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

4 2003 Act s 157(5)(a).

5 Ibid s 157(5)(b).

6 Ibid s 157(7).

7 Ibid s 157(1), (8)(a).

8 Ibid s 158(1), (2)(a).

9 Ibid s 158(1), (2)(b).

10 Ie if ibid s 157(3) applies, an extradition offence within the meaning given by s 64 (see PARA 1406) or, if s 157(4) applies an extradition offence within the meaning given by s 137 (see PARA 1451): s 158(1), (2)(c).

11 Ibid s 158(1), (2)(d).

12 Ie the part of the United Kingdom where the judge exercises jurisdiction: ibid s 158(1), (3).

13 Ibid s 158(1), (2)(d).

14 Ibid s 158(1), (4)(a).

15 Ibid s 158(1), (4)(b).

16 Ibid s 158(1), (5).

17 Ie under ibid Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512): s 157(2).

18 For the meaning of 'premises' see PARA 1513 NOTE 1.

19 2003 Act s 157(2)(b).

20 Ibid s 157(2)(c).

21 Ibid s 157(2)(d).

22 Ibid s 157(2)(e).

23 Ie if the application is sought under ibid Pt 1. For the meaning of 'category 1 territory' see PARA 1401.

24 Ibid s 157(3)(a).

25 Ie within the meaning given by ibid s 64 (see PARA 1406): s 157(3)(b).

26 Ie if the application is sought under ibid Pt 2. For the meaning of 'category 2 territory' see PARA 1447.

27 Ibid s 157(4)(a).

28 Ie within the meaning given by ibid s 137 (see PARA 1451): s 157(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1515. Warrants: special procedure material and excluded material

1515. Warrants: special procedure material and excluded material

A special warrant¹ is required for the search and seizure of special procedure material² or excluded material³. Such a warrant may authorise a constable to enter and search the premises⁴ specified in the application for the warrant and to seize and retain any material found there⁵ which (1) is special procedure material, if the application for the warrant states that the warrant is sought in relation to special procedure material⁶; or (2) is excluded material, if the application for the warrant states that the warrant is sought in relation to excluded material⁷.

A circuit judge may, on an application made to him by a constable, issue such a warrant⁸ if he is satisfied that the requirements for the making of a production order⁹ are fulfilled¹⁰, and the further requirement for the issue of a warrant is fulfilled¹¹. That further requirement is that any of the following conditions is satisfied: (a) it is not practicable to communicate with a person entitled to grant entry to the premises¹²; (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material¹³; (c) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment¹⁴ and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued¹⁵.

The application for a warrant must state that (i) the extradition of a person specified in the application is sought¹⁶; (ii) the warrant is sought in relation to premises specified in the application¹⁷; (iii) the warrant is sought in relation to material, or material of a description, specified in the application¹⁸; (iv) the material is special procedure material or excluded material¹⁹.

If the application states that the extradition of the person is sought by a category 1 territory²⁰, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence which is specified in the application²¹, and which is an extradition offence²². If the application states that the extradition of the person is sought by a category 2 territory²³, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence which is specified in the application²⁴, and which is an extradition offence²⁵.

1 I.e. a warrant under the Extradition Act 2003 s 160. Section 160 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 For the meaning of 'special procedure material' see the Police and Criminal Evidence Act 1984 s 14 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 876 (s 14 applied by the 2003 Act s 174(1), (6)(a), (9)).

3 For the meaning of 'excluded material' see the 1984 Act s 11 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875 (s 11 applied by the 2003 Act s 174(1), (3)(a), (9)).

4 For the meaning of 'premises' see PARA 1513 NOTE 1.

5 I.e. any such material which would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom): 2003 Act s 160(6). The relevant part of the United Kingdom is the part of the United Kingdom where the judge exercises jurisdiction: s 160(7).

6 Ibid s 160(5)(a).

- 7 Ibid s 160(5)(b).
- 8 Ie under ibid s 160.
- 9 As to production orders see PARA 1514.
- 10 2003 Act s 160(1)(a), (9)(a).
- 11 Ibid s 160(1)(b), (9)(a).
- 12 Ibid s 160(8)(a).
- 13 Ie the material referred to in ibid s 158(2)(d) (see PARA 1514): s 160(8)(b).
- 14 Ie including an enactment passed after the 2003 Act.
- 15 Ibid s 160(8)(c).
- 16 Ie under ibid Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512): s 160(2).
- 17 Ibid s 160(2)(b).
- 18 Ibid s 160(2)(c).
- 19 Ibid s 160(2)(d).
- 20 Ie if the application is sought under ibid Pt 1. For the meaning of 'category 1 territory' see PARA 1401.
- 21 Ibid s 160(3)(a).
- 22 Ie within the meaning given by ibid s 64 (see PARA 1406): s 160(3)(b).
- 23 Ie if the application is sought under ibid Pt 2. For the meaning of 'category 2 territory' see PARA 1447.
- 24 Ibid s 160(4)(a).
- 25 Ie within the meaning given by ibid s 137 (see PARA 1451): s 160(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1516. Computer information

1516. Computer information

The following provision applies if any of the special procedure material¹ or excluded material² specified in an application for a production order³ consists of information stored in any electronic form⁴. If the order is an order requiring a person to produce the material to a constable for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him⁵, or in which it is visible and legible or from which it can readily be produced in a visible and legible form⁶. If the order is an order requiring a person to give a constable access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible⁷, or from which it can readily be produced in a visible and legible form⁸.

1 For the meaning of 'special procedure material' see the Police and Criminal Evidence Act 1984 s 14 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 876 (s 14 applied by the Extradition Act 2003 s 174(1), (6)(a), (9)).

2 For the meaning of 'excluded material' see the 1984 Act s 11 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875 (s 11 applied by the 2003 Act s 174(1), (3)(a), (9)).

3 As to production orders see PARA 1514.

4 2003 Act s 159(1).

5 Ibid s 159(2)(a).

6 Ibid s 159(2)(b).

7 Ibid s 159(3)(a).

8 Ibid s 159(3)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1517. Entry and search of premises for purposes of arrest

1517. Entry and search of premises for purposes of arrest

If a constable has power to arrest a person under an extradition arrest power¹, he may enter and search any premises² for the purpose of exercising the power of arrest if he has reasonable grounds for believing that the person is on the premises³. The power to search⁴ is exercisable only to the extent that is reasonably required for the purpose of exercising the power of arrest⁵. A constable who has entered premises in exercise of his search and entry power⁶ may seize and retain anything which is on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence⁷ or it is evidence in relation to an offence⁸, and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed⁹. If the premises contain two or more separate dwellings, the search and entry power¹⁰ is a power to enter and search only any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises¹¹, and any dwelling comprised in the premises in which the constable has reasonable grounds for believing that the person may be¹².

1 Extradition Act 2003 s 161(1). Each of the following is an extradition arrest power: (1) a Part 1 warrant in respect of which a certificate under s 2 (see PARA 1402) has been issued; (2) s 5 (see PARA 1405); (3) a warrant issued under s 71 (see PARA 1449); (4) a provisional warrant: s 174(1), (2). For the meaning of 'Part 1 warrant' see PARA 1402. For the meaning of 'provisional warrant' see PARA 1450. The 2003 Act s 161 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

2 For the meaning of 'premises' see PARA 1513 NOTE 1.

3 2003 Act s 161(2).

4 Ie the power to search conferred by *ibid* s 162(2).

5 *Ibid* s 161(3).

6 Ie the power conferred by *ibid* s 162(2).

7 Ie including an offence committed outside the United Kingdom: *ibid* s 161(5).

8 *Ibid* s 161(4)(a).

9 *Ibid* s 161(4)(b).

10 Ie the power conferred by *ibid* s 162(2).

11 *Ibid* s 161(5)(a).

12 *Ibid* s 161(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1518. Entry and search of premises on arrest

1518. Entry and search of premises on arrest

If a person has been arrested under an extradition arrest power¹ at a place other than a police station², a constable may enter and search any premises³ in which the person was at the time of his arrest or immediately before his arrest if he has reasonable grounds for believing (1) if the person has not been convicted of the relevant offence⁴, that there is on the premises evidence, other than items subject to legal privilege⁵, relating to the relevant offence⁶; (2) in any case, that there is on the premises evidence, other than items subject to legal privilege, relating to the identity of the person⁷. The power to search⁸ (a) if the person has not been convicted of the relevant offence, is a power to search for evidence, other than items subject to legal privilege, relating to the relevant offence⁹; (b) in any case, is a power to search for evidence, other than items subject to legal privilege, relating to the identity of the person¹⁰. A constable may seize and retain anything for which he may search¹¹. A constable who has entered premises in exercise of his power to enter and search¹² may seize and retain anything which is on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence¹³ or it is evidence in relation to an offence¹⁴, and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed¹⁵. If the premises contain two or more separate dwellings, the power to enter and search¹⁶ is a power to enter and search only any dwelling in which the arrest took place or in which the person was immediately before his arrest¹⁷, and any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwelling comprised in the premises¹⁸.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 162(1). Section 162 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 For the meaning of 'premises' see PARA 1513 NOTE 1.

4 The relevant offence is the offence: (1) referred to in the Part 1 warrant, if the arrest was under a Part 1 warrant; (2) in respect of which the constable has reasonable grounds for believing that a Part 1 warrant has been or will be issued, if the arrest was under the 2003 Act s 5 (see PARA 1405); (3) in respect of which extradition is requested, if the arrest was under a warrant issued under s 71 (see PARA 1449); (4) of which the person is accused, if the arrest was under a provisional warrant (see PARA 1450): s 162(3). For the meaning of 'provisional warrant' see PARA 1450.

5 For the meaning of 'items of legal privilege' see the Police and Criminal Evidence Act 1984 s 10 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873 (s 10 applied by the 2003 Act s 174(1), (4)(a), (9)).

6 Ibid s 162(2)(a).

7 Ibid s 162(2)(b).

8 Ie the power to search conferred by ibid s 162(2).

9 Ibid s 162(4)(a).

10 Ibid s 162(4)(b). The power to search conferred by s 162(2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of s 162(4): s 162(5).

11 Ie by virtue of ibid s 162(4), (5): s 162(6).

- 12 le the power conferred by *ibid* s 162(2).
- 13 le including an offence committed outside the United Kingdom: *ibid* s 162(8).
- 14 *Ibid* s 162(7)(a).
- 15 *Ibid* s 162(7)(b).
- 16 le the power conferred by *ibid* s 162(2).
- 17 *Ibid* s 162(8)(a).
- 18 *Ibid* s 162(8)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1519. Search of person on arrest

1519. Search of person on arrest

If a person has been arrested under an extradition arrest power¹ at a place other than a police station², a constable may search the person if he has reasonable grounds for believing that the person may present a danger to himself or others³. A constable searching a person in exercise of this search power may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person⁴.

A constable may search the person if he has reasonable grounds for believing that the person may have concealed on him anything (1) which he might use to assist him to escape from lawful custody⁵, (2) and which might be evidence relating to an offence⁶ or to the identity of the person⁷. This power to search is a power to search for anything falling within head (1) or (2) above⁸, and is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing⁹. A constable searching a person in exercise of this search power may seize and retain anything he finds if he has reasonable grounds for believing that the person might use it to assist him to escape from lawful custody¹⁰, or that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence¹¹.

The search powers¹² do not authorise a constable to require a person to remove any of his clothing in public, other than an outer coat, jacket or gloves¹³, or authorise a search of a person's mouth¹⁴.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 163(1). Nothing in s 163 affects the power conferred by the Terrorism Act 2000 s 43 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 426). The 2003 Act s 163 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 163(2).

4 Ibid s 163(6).

5 Ibid s 163(3)(a).

6 Ie including an offence committed outside the United Kingdom: ibid s 163(8).

7 Ibid s 163(3)(b).

8 Ibid s 163(4)(a).

9 Ibid s 163(4)(b).

10 Ibid s 163(7)(a).

11 Ibid s 163(7)(b).

12 Ie the search powers conferred by ibid s 163(2), (3).

13 Ibid s 163(5)(a).

14 Ibid s 163(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1520. Entry and search of premises after arrest

1520. Entry and search of premises after arrest

If a person has been arrested under an extradition arrest power¹, a constable may enter and search any premises² occupied or controlled by the person if the constable has reasonable grounds for suspecting (1) if the person has not been convicted of the relevant offence³, that there is on the premises evidence, other than items subject to legal privilege⁴, relating to the relevant offence⁵; (2) in any case, that there is on the premises evidence, other than items subject to legal privilege, relating to the identity of the person⁶. The power to search⁷ (a) if the person has not been convicted of the relevant offence, is a power to search for evidence, other than items subject to legal privilege, relating to the relevant offence⁸; (b) in any case, is a power to search for evidence, other than items subject to legal privilege, relating to the identity of the person⁹. A constable may seize and retain anything for which he may search¹⁰. A constable who has entered premises in exercise of his power to search may seize and retain anything which is on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence¹¹ or it is evidence in relation to an offence¹², and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed¹³.

1 Extradition Act 2003 s 164(1). For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1. Section 164 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 For the meaning of 'premises' see PARA 1513 NOTE 1.

3 The relevant offence is the offence: (1) referred to in the Part 1 warrant, if the arrest was under a Part 1 warrant; (2) in respect of which the constable has reasonable grounds for believing that a Part 1 warrant has been or will be issued, if the arrest was under the 2003 Act s 5 (see PARA 1405); (3) in respect of which extradition is requested, if the arrest was under a warrant issued under s 71 (see PARA 1449); (4) of which the person is accused, if the arrest was under a provisional warrant: s 164(3). For the meaning of 'provisional warrant' see PARA 1450.

4 For the meaning of 'items of legal privilege' see the Police and Criminal Evidence Act 1984 s 10 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873 (s 10 applied by the 2003 Act s 174(1), (4)(a), (9)).

5 Ibid s 164(2)(a). The powers conferred by s 164(2), (6) may be exercised only if a police officer of the rank of inspector or above has given written authorisation for their exercise: s 164(9). The power conferred by s 164(2) may be exercised without authorisation under s 164(9) if it is exercised before the person arrested is taken to a police station, and the presence of the person at a place other than a police station is necessary for the effective exercise of the power to search: s 164(10).

6 Ibid s 164(2)(b).

7 Ie the power to search conferred by ibid s 164(2).

8 Ibid s 164(4)(a).

9 Ibid s 164(4)(b). The power to search conferred by s 164(2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of s 164(4): s 164(5).

10 Ie anything for which he may search by virtue of ibid s 164(4), (5): s 164(6).

11 Ie including an offence committed outside the United Kingdom: ibid s 164(8).

12 Ibid s 164(7)(a).

13 Ibid s 164(7)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1521. Fingerprints and samples

1521. Fingerprints and samples

If a person has been arrested under an extradition arrest power¹ and is detained at a police station², fingerprints³ or a non-intimate sample⁴ may be taken from him without the appropriate consent⁵ only if a police officer of at least the rank of inspector authorises the fingerprints or sample to be taken⁶. Otherwise, fingerprints may be taken from the person only if they are taken by a constable with the appropriate consent given in writing⁷, and a non-intimate sample may be taken from the person only if it is taken by a constable with the appropriate consent given in writing⁸.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 166(1).

3 For the meaning of 'fingerprints' see the Police and Criminal Evidence Act 1984 s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1021 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(b), (9)).

4 For the meaning of 'non-intimate sample' see the 1984 Act s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1027 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(d), (9)).

5 For the meaning of 'appropriate consent' see the 1984 Act s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1007 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(a), (9)).

6 Ibid s 166(2)(b), (3)(b), (4).

7 Ibid s 166(2)(a).

8 Ibid s 166(3)(a).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1522. Searches and examination

1522. Searches and examination

If a person has been arrested under an extradition arrest power¹ and is detained at a police station², and if a police officer of at least the rank of inspector authorises it, the person may be searched or examined, or both, for the purpose of facilitating the ascertainment of his identity³. An identifying mark⁴ found on a such search or examination may be photographed with the appropriate consent⁵, or without the appropriate consent, if that consent is withheld or it is not practicable to obtain it⁶. The only persons entitled to carry out a search or examination, or take a photograph⁷, are constables⁸ and persons designated by the appropriate police officer⁹. A person may not under these search and examination powers carry out a search or examination of a person of the opposite sex¹⁰ or take a photograph of any part of the body, other than the face, of a person of the opposite sex¹¹. An intimate search¹² may not be carried out under these search and examination powers¹³.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 167(1).

3 Ibid s 167(2). Ascertaining a person's identity includes showing that he is not a particular person: s 167(7).

4 Mark includes features and injuries and a mark is an identifying mark if its existence in a person's case facilitates the ascertainment of his identity: ibid s 167(9).

5 Ibid s 167(3)(a). For the meaning of 'appropriate consent' see the Police and Criminal Evidence Act 1984 s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1007 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(a), (9)).

6 Ibid s 167(3)(b).

7 Ie under ibid s 167. Taking a photograph includes using a process by means of which a visual image may be produced, and photographing a person must be construed accordingly: s 167(8).

8 Ibid s 167(4)(a).

9 Ibid s 167(4)(b). The appropriate police officer is the chief officer of police for the police area in which the police station in question is situated: s 167(10)(a).

10 Ibid s 167(5)(a).

11 Ibid s 167(5)(b).

12 For the meaning of 'intimate search' see the 1984 Act s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1007 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(c), (9)).

13 Ibid s 167(6).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1523. Photographs

1523. Photographs

If a person has been arrested under an extradition arrest power¹ and is detained at a police station², he may be photographed with the appropriate consent³, or without the appropriate consent, if that consent is withheld or it is not practicable to obtain it⁴. A person proposing to take a photograph⁵ of a person under this power may for the purpose of doing so require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed⁶, and if the requirement is not complied with may remove the item or substance himself⁷. The only persons entitled to take such a photograph are constables⁸ and persons designated for these purposes by the appropriate police officer⁹.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 168(1).

3 Ibid s 168(2)(a). For the meaning of 'appropriate consent' see the Police and Criminal Evidence Act 1984 s 65 and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1007 (s 65 applied by the 2003 Act s 174(1), (7)(a), (8)(a), (9)).

4 Ibid s 168(2)(b).

5 Taking a photograph includes using a process by means of which a visual image may be produced, and photographing a person must be construed accordingly: ibid s 168(5).

6 Ibid s 168(3)(a).

7 Ibid s 168(3)(b).

8 Ibid s 168(4)(a).

9 Ibid s 168(4)(b). The appropriate police officer is the chief officer of police for the police area in which the police station in question is situated: s 168(6)(a).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1524. Other treatment and rights

1524. Other treatment and rights

The following provision applies in relation to cases where a person (1) is arrested under an extradition arrest power¹ at a police station²; (2) is taken to a police station after being arrested elsewhere under an extradition arrest power³; (3) is detained at a police station after being arrested under an extradition arrest power⁴.

In relation to those cases, the Secretary of State may by order apply specified legislation concerning searches of detained persons⁵, intimate searches⁶, the right to have someone informed when arrested⁷ and access to legal advice⁸, with specified modifications⁹.

1 For the meaning of 'extradition arrest power' see PARA 1517 NOTE 1.

2 Extradition Act 2003 s 171(1)(a).

3 Ibid s 171(1)(b).

4 Ibid s 171(1)(c).

5 Ie Police and Criminal Evidence Act 1984 s 54 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1006): 2003 Act s 171(3)(a).

6 Ie 1984 Act s 55 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1007): 2003 Act s 171(3)(b).

7 Ie 1984 Act s 56 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 952): 2003 Act s 171(3)(c).

8 Ie 1984 Act s 58 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 953): 2003 Act s 171(3)(d).

9 Ibid s 171(2). In exercise of the power so conferred the Secretary of State has made the Extradition Act 2003 (Police Powers) Order 2003, SI 2003/3106 (amended by SI 2005/3389).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1525. Delivery of seized property

1525. Delivery of seized property

The following provision applies to anything which has been seized or produced¹. A constable may deliver any such thing to a person who is or is acting on behalf of an authority if the constable has reasonable grounds for believing that the authority is an authority of the relevant territory², and has functions such that it is appropriate for the thing to be delivered to it³. If the relevant seizure power was a warrant⁴, or the thing was produced under an order⁵, the relevant territory is the category 1 or category 2 territory⁶ specified in the application for the warrant or order⁷.

1 Ie seized or produced under the Extradition Act 2003 Pt 4 (ss 156-176), or seized under the Criminal Justice and Police Act 2001 s 50 or 51 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 890, 891) in reliance on a power of seizure conferred by the 2003 Act Pt 4: s 172(1). Section 172 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 2003 Act s 172(2)(a). If the relevant seizure power was s 161(4) (see PARA 1517), s 162(6) or (7) (see PARA 1518), s 163(6) or (7) (see PARA 1519) or s 164(6) or (7) (see PARA 1520), the relevant territory is: (1) the territory in which the Part 1 warrant was issued, in a case where the applicable extradition arrest power is a Part 1 warrant in respect of which a certificate under s 2 (see PARA 1402) has been issued; (2) the territory in which a constable has reasonable grounds for believing that a Part 1 warrant has been or will be issued, in a case where the applicable extradition arrest power is s 5 (see PARA 1405); (3) the territory to which a person's extradition is requested, in a case where the applicable extradition arrest power is a warrant issued under s 71 (see PARA 1449); (4) the territory in which a person is accused of the commission of an offence or has been convicted of an offence, in a case where the applicable extradition arrest power is a provisional warrant: s 172(4).

The relevant seizure power is the power under which the thing was seized, or the power in reliance on which the thing was seized under of the 2001 Act s 50 or 51: 2003 Act s 172(6). The applicable extradition arrest power is the extradition arrest power under which a constable had a power of arrest, if the relevant seizure power was s 161(4), or the extradition arrest power under which a person was arrested, if the relevant seizure power was s 162(6) or (7), 163(6) or (7) or 164(6) or (7): s 172(5). For the meaning of 'provisional warrant' see PARA 1450.

3 Ibid s 172(2)(b).

4 Ie a warrant issued under ibid Pt 4.

5 Ie an order made under ibid Pt 4.

6 For the meaning of a 'category 1 territory' see PARA 1401 and for the meaning of a 'category 2 territory' see PARA 1447.

7 2003 Act s 172(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1526. Codes of practice

1526. Codes of practice

The Secretary of State must issue codes of practice in connection with (1) the exercise of police powers¹; (2) the retention, use and return of anything seized or produced²; (3) access to and the taking of photographs and copies of anything so seized or produced³; (4) the retention, use, disclosure and destruction of fingerprints, a sample or a photograph taken⁴.

If the Secretary of State proposes to issue a such code of practice he must (a) publish a draft of the code⁵; (b) consider any representations made to him about the draft⁶; (c) if he thinks it appropriate, modify the draft in the light of any such representations⁷.

The Secretary of State must lay the code before Parliament⁸, and when he has done so he may bring the code into operation by order⁹. The Secretary of State may revise the whole or any part of a code and issue the code as revised¹⁰. A failure by a constable to comply with a provision of a code does not of itself make him liable to criminal or civil proceedings¹¹. A code is admissible in evidence in proceedings¹² and must be taken into account by a judge or court in determining any question to which it appears to the judge or the court to be relevant¹³.

1 Ie the powers conferred by the Extradition Act 2003 Pt 4 (ss 156-176): s 173(1)(a).

2 Ie under ibid Pt 4: s 173(1)(b).

3 Ibid s 173(1)(c).

4 Ie taken under ibid Pt 4: s 173(1)(d).

5 Ibid s 173(2)(a).

6 Ibid s 173(2)(b).

7 Ibid s 173(2)(c).

8 Ibid s 173(3).

9 Ibid s 173(4). In exercise of the power so conferred the Secretary of State has made under s 173(4) the Extradition Act 2003 (Police Powers: Codes of Practice) Order 2003, SI 2003/3336.

10 2003 Act s 173(5). Section 173(2)-(4) apply to such a revised code as they apply to the original code: s 173(5).

11 Ibid s 173(6).

12 Ie proceedings under the 2003 Act.

13 Ibid s 173(7). If the Secretary of State publishes a draft code of practice in connection with a matter specified in s 173(1) before the date on which s 173 comes into force: (1) the draft is as effective as one published under s 173(2) on or after that date; (2) representations made to the Secretary of State about the draft before that date are as effective as representations made to him about it after that date; (3) modifications made by the Secretary of State to the draft in the light of any such representations before that date are as effective as any such modifications made by him on or after that date: s 173(8).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/14. POLICE POWERS/1527. Customs officers and service policemen

1527. Customs officers and service policemen

The Treasury may by order provide for any provision¹ which applies in relation to police officers or persons arrested by police officers to apply with specified modifications in relation to customs officers² or persons arrested by customs officers³.

The Secretary of State may by order provide for any provision⁴ which applies in relation to police officers or persons arrested by police officers to apply with specified modifications in relation to service policemen⁵ or persons arrested by service policemen⁶.

1 Ie any provision of the Extradition Act 2003 Pt 4 (ss 156-176): s 175.

2 For the meaning of 'customs officer' see PARA 1403 NOTE 4.

3 2003 Act s 175.

4 Ie any provision of the 2003 Act Pt 4: s 176.

5 For the meaning of 'service policeman' see PARA 1403 NOTE 6.

6 2003 Act s 176.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1528. Extradition from British overseas territories

15. OTHER MATTERS RELATING TO EXTRADITION

1528. Extradition from British overseas territories

The following provision applies in relation to extradition (1) from a British overseas territory to a category 1 territory¹; (2) from a British overseas territory to the United Kingdom²; (3) from a British overseas territory to a category 2 territory³; (4) from a British overseas territory to any of the Channel Islands or the Isle of Man⁴.

An Order in Council may provide for any provision⁵ applicable to extradition from the United Kingdom to apply to extradition in a case falling within head (1) or (2) above⁶. An Order in Council may provide for any such provision applicable to extradition from the United Kingdom to a category 2 territory to apply to extradition in a case falling within head (3) or (4) above⁷. Any such Order in Council may provide that the provision applied has effect with specified modifications⁸, and any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 Extradition Act 2003 s 177(1)(a). For the meaning of a 'category 1 territory' see PARA 1401.

2 Ibid s 177(1)(b).

3 Ibid s 177(1)(c). For the meaning of a 'category 2 territory' see PARA 1447.

4 Ibid s 177(1)(d).

5 Ie any provision of the 2003 Act.

6 Ibid s 177(2). An Order in Council under the 2003 Act s 177 may make different provision for different purposes, and may include supplementary, incidental, saving or transitional provisions: s 224(2).

7 Ibid s 177(3).

8 Ibid s 177(4).

9 Ibid s 224(1).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1529. Extradition to British overseas territories

1529. Extradition to British overseas territories

The following provision applies in relation to extradition (1) to a British overseas territory from a category 1 territory¹; (2) to a British overseas territory from the United Kingdom²; (3) to a British overseas territory from a category 2 territory³; (4) to a British overseas territory from any of the Channel Islands or the Isle of Man⁴.

An Order in Council may provide for any provision⁵ applicable to extradition to the United Kingdom to apply to extradition in a case falling within head (1) or (2) above⁶. An Order in Council may provide for any such provision applicable to extradition to the United Kingdom from a category 2 territory to apply to extradition in a case falling within head (3) or (4) above⁷. Any such Order in Council may provide that the provision applied has effect with specified modifications⁸, and any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 Extradition Act 2003 s 178(1)(a). For the meaning of a 'category 1 territory' see PARA 1401.

2 Ibid s 178(1)(b).

3 Ibid s 178(1)(c). For the meaning of a 'category 2 territory' see PARA 1447.

4 Ibid s 178(1)(d).

5 Ie any provision of the 2003 Act.

6 Ibid s 178(2). An Order in Council under the 2003 Act s 178 may make different provision for different purposes, and may include supplementary, incidental, saving or transitional provisions: s 224(2).

7 Ibid s 178(3).

8 Ibid s 178(4).

9 Ibid s 224(1).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1530. Competing claims to extradition

1530. Competing claims to extradition

The following provision applies if at the same time (1) there is a Part 1 warrant¹ in respect of a person, a certificate has been issued² in respect of the warrant, and the person has not been extradited in pursuance of the warrant or discharged³, and (2) there is a request for the same person's extradition, a certificate has been issued⁴ in respect of the request, and the person has not been extradited in pursuance of the request or discharged⁵.

The Secretary of State may (a) order proceedings, or further proceedings, on one of them (the warrant or the request) to be deferred until the other one has been disposed of⁶, if neither the warrant nor the request has been disposed of⁷; (b) order the person's extradition in pursuance of the warrant to be deferred until the request has been disposed of, if an order for his extradition in pursuance of the warrant has been made⁸; (c) order the person's extradition in pursuance of the request to be deferred until the warrant has been disposed of, if an order for his extradition in pursuance of the request has been made⁹.

In applying the above provision the Secretary of State must take account in particular of these matters: (i) the relative seriousness of the offences concerned¹⁰; (ii) the place where each offence was committed, or was alleged to have been committed¹¹; (iii) the date when the warrant was issued and the date when the request was received¹²; (iv) whether, in the case of each offence, the person is accused of its commission, but not alleged to have been convicted, or is alleged to be unlawfully at large after conviction¹³.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie under the Extradition Act 2003 s 2: see PARA 1402. Section 179 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

3 2003 Act s 179(1)(a).

4 Ie under ibid s 70: see PARA 1448.

5 Ibid s 179(1)(b).

6 As to the disposal of a Part 1 warrant see PARA 1432 NOTE 4. As to the disposal of an extradition request see PARA 1417 NOTE 3.

7 2003 Act s 179(2)(a).

8 Ibid s 179(2)(b).

9 Ibid s 179(2)(c).

10 Ibid s 179(3)(a).

11 Ibid s 179(3)(b).

12 Ibid s 179(3)(c).

13 Ibid s 179(3)(d). For the purposes of s 179 a person is alleged to be unlawfully at large after conviction of an offence if he is alleged to have been convicted of it and his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence: s 179(5) (added by the Police and Justice Act 2006 Sch 13 para 2(7)).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1531. Proceedings on deferred warrant or request

1531. Proceedings on deferred warrant or request

If an order is made¹ deferring proceedings on an extradition claim in respect of a person² (the deferred claim) until another extradition claim in respect of the person has been disposed of³, and the other extradition claim is disposed of⁴, the judge may make an order for proceedings on the deferred claim to be resumed⁵. However, no such order may be made after the end of the required period⁶. If the person applies to the appropriate judge⁷ to be discharged, the judge may order his discharge⁸. If the person applies to the appropriate judge to be discharged, the judge must order his discharge if the required period has ended⁹, and the judge has not made an order¹⁰ or ordered the person's discharge¹¹.

1 Ie under the Extradition Act 2003.

2 An extradition claim is made in respect of a person if a Part 1 warrant is issued in respect of him, or a request for his extradition is made: *ibid* s 180(9). For the meaning of 'Part 1 warrant' see *PARA 1402*.

3 *Ibid* s 180(1)(a).

4 *Ibid* s 180(1)(b).

5 *Ibid* s 180(2).

6 *Ibid* s 180(3). The required period is 21 days starting with the day on which the other extradition claim is disposed of: s 180(6).

7 If the proceedings on the deferred claim were under *ibid* Pt 1 (ss 1-68A) (see *PARAS 1401-1446*), s 67 applies for determining the appropriate judge (see *PARA 1404 NOTE 3*): 2003 Act s 180(7). If the proceedings on the deferred claim were under Pt 2 (ss 69-141) (see *PARAS 1447-1512*), s 139 (see *PARA 1448*) applies for determining the appropriate judge: s 180(8).

8 *Ibid* s 180(4).

9 *Ibid* s 180(5)(a).

10 Ie under *ibid* s 180(2).

11 *Ibid* s 180(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1532. Proceedings where extradition deferred

1532. Proceedings where extradition deferred

If an order is made¹ deferring a person's extradition in pursuance of an extradition claim² (the deferred claim) until another extradition claim in respect of him has been disposed of³, the other extradition claim is disposed of⁴, the judge may make an order for the person's extradition in pursuance of the deferred claim to cease to be deferred⁵. No such order may be made after the end of the required period⁶. If the person applies to the appropriate judge⁷ to be discharged, the judge may order his discharge⁸. If the person applies to the appropriate judge to be discharged, the judge must order his discharge if the required period has ended⁹, and the judge has not made an order¹⁰ or ordered the person's discharge¹¹.

1 Ie under the Extradition Act 2003.

2 An extradition claim is made in respect of a person if a Part 1 warrant is issued in respect of him, or a request for his extradition is made: *ibid* s 181(9). For the meaning of 'Part 1 warrant' see *PARA* 1402.

3 *Ibid* s 181(1)(a).

4 *Ibid* s 181(1)(b).

5 *Ibid* s 181(2).

6 *Ibid* s 181(3). The required period is 21 days starting with the day on which the other extradition claim is disposed of: s 181(6).

7 If the proceedings on the deferred claim were under *ibid* Pt 1 (ss 1-68A) (see *PARAS* 1401-1446), s 67 (see *PARA* 1405) applies for determining the appropriate judge: s 181(7). If the proceedings on the deferred claim were under Pt 2 (ss 69-141) (see *PARAS* 1447-1512), s 139 (see *PARA* 1448) applies for determining the appropriate judge: s 181(8).

8 *Ibid* s 181(4).

9 *Ibid* s 181(5)(a).

10 Ie under *ibid* s 181(2).

11 *Ibid* s 181(5)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1533. Re-extradition: preliminary; re-extradition hearing

1533. Re-extradition: preliminary; re-extradition hearing

The following provisions apply in relation to a person if the following conditions are satisfied¹: (1) the person was extradited to a territory in accordance with the specified provisions²; (2) the person was serving a sentence of imprisonment or another form of detention in the United Kingdom (the 'UK sentence') before he was extradited³; (3) if the person was extradited in accordance with certain specified provisions⁴, the Part 1 warrant⁵ in pursuance of which he was extradited contained a statement that it was issued with a view to his extradition for the purpose of being prosecuted for an offence⁶; if the person was extradited in accordance with certain other specified provisions⁷, the request in pursuance of which the person was extradited contained a statement that the person was accused of the commission of an offence⁸; (4) a certificate issued by a judicial authority of the territory shows that (a) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment (the 'overseas sentence') was imposed on the person in the territory⁹; (b) the overseas sentence was imposed on him in respect of the offence specified in the warrant or request, or any other offence committed before his extradition in respect of which he was permitted to be dealt with in the territory¹⁰; (5) before serving the overseas sentence the person was returned to the United Kingdom to serve the remainder of the UK sentence¹¹.

As soon as practicable after the relevant time¹² the person must be brought before the appropriate judge¹³ for the judge to decide whether the person is to be extradited again to the territory in which the overseas sentence was imposed¹⁴. If this provision is not complied with and the person applies to the judge to be discharged, the judge must order his discharge¹⁵. The person must be treated as continuing in legal custody until he is brought before the appropriate judge or he is discharged¹⁶. If the person is brought before the appropriate judge the judge must decide whether the territory in which the overseas sentence was imposed is a category 1 territory¹⁷, a category 2 territory¹⁸, or neither a category 1 territory nor a category 2 territory¹⁹. If the judge decides that the territory is a category 1 territory or a category 2 territory, further provisions apply²⁰; if the judge decides that the territory is neither a category 1 territory nor a category 2 territory, he must order the person's discharge²¹.

1 Extradition Act 2003 s 186(1).

2 Ie in accordance with *ibid* Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512): s 168(2).

3 *Ibid* s 186(3).

4 Ie *ibid* Pt 1.

5 For the meaning of 'Part 1 warrant' see PARA 1402.

6 2003 Act s 186(4)(a).

7 Ie *ibid* Pt 2.

8 *Ibid* s 186(4)(b).

9 *Ibid* s 186(5)(a).

10 *Ibid* s 186(5)(b).

11 Ibid s 186(6). Section 186 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

12 The relevant time is the time at which the person would otherwise be released from detention pursuant to the UK sentence, whether or not on licence: 2003 Act s 187(2).

13 Ibid s 139 (see PARA 1448) applies for the purposes of s 187 as it applies for the purposes of Pt 2: s 187(10) (substituted by the Police and Justice Act 2006 Sch 13 para 15(2)).

14 2003 Act s 187(1).

15 Ibid s 187(3).

16 Ibid s 187(4).

17 Ibid s 187(5)(a). For the meaning of 'category 1 territory' see PARA 1401.

18 Ibid s 187(5)(b). For the meaning of 'category 2 territory' see PARA 1447.

19 Ibid s 187(5)(c). A person's discharge as a result of s 187, 188 (see PARA 1534) or 189 (see PARA 1535) does not affect any conditions on which he is released from detention pursuant to the UK sentence: s 187(9).

20 If the judge decides that the territory is a category 1 territory, *ibid* s 188 applies, and if he decides that the territory is a category 2 territory, s 189 applies: s 187(6), (7).

21 Ibid s 187(8). A person's discharge as a result of s 188 or s 189 does not affect any conditions on which he is released from detention pursuant to the UK sentence: s 187(9).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1534. Re-extradition to category 1 territories

1534. Re-extradition to category 1 territories

If the judge decides that the territory in question is a category 1 territory¹, the relevant extradition legislation² applies as it would if (1) a Part 1 warrant had been issued in respect of the person³; (2) the warrant contained a statement that the person had been convicted of the relevant offence⁴, and the warrant was issued with a view to the person's arrest and extradition to the territory for the purpose of serving a sentence imposed in respect of the relevant offence⁵; (3) the warrant were issued by the authority of the territory which issued the specified certificate⁶; (4) the relevant offence were specified in the warrant⁷; (5) the judge were the appropriate judge⁸; (6) the hearing at which the judge is to make the decision⁹ were the extradition hearing¹⁰; (7) the proceedings before the judge were under certain provisions of the relevant extradition legislation¹¹.

1 Ie under the Extradition Act 2003 s 187(6): s 188(1). For the meaning of 'category 1 territory' see PARA 1401. Section 188 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie the 2003 Act.

3 Ibid s 188(1)(a).

4 Ibid s 188(1)(b)(i) (amended by Police and Justice Act 2006 Sch 13 para 2(8)). The relevant offence is the offence in respect of which the overseas sentence is imposed: 2003 Act s 188(3).

5 Ibid s 188(1)(b)(ii).

6 Ie the certificate referred to in ibid s 186(5): s 188(1)(c).

7 Ibid s 188(1)(d).

8 Ie for the purposes of ibid Pt 1 (ss 1-68A) (see PARAS 1401-1446): s 188(1)(e). For the meaning of 'appropriate judge' see PARA 1404 NOTE 3.

9 Ie referred to in ibid s 187(1) (see PARA 1533): s 188(1)(f).

10 Ibid s 188(1)(f). For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

11 Ie under ibid Pt 1: s 188(1)(g). As applied by s 188(1) the 2003 Act has effect with the modifications set out in Sch 1 Pt 1: s 188(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1535. Re-extradition to category 2 territories

1535. Re-extradition to category 2 territories

If the judge decides that a territory in question is a category 2 territory¹, the relevant extradition legislation² applies as it would if (1) a valid request for the person's extradition³ to the territory had been made⁴; (2) the request contained a statement that the person had been convicted of the relevant offence⁵; (3) the relevant offence were specified in the request⁶; (4) the hearing at which the appropriate judge is to make the decision⁷ were the extradition hearing⁸; (5) the proceedings before the judge were under certain provisions of the relevant extradition legislation⁹.

1 Ie under the Extradition Act 2003 s 187(7); s 189(1). For the meaning of 'category 2 territory' see PARA 1447. Section 189 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie the 2003 Act.

3 As to a valid request for a person's extradition see PARA 1448.

4 2003 Act s 189(1)(a).

5 Ibid s 189(1)(b) (amended by the Police and Justice Act 2006 Sch 13 para 2(9)). The relevant offence is the offence in respect of which the overseas sentence is imposed: 2003 Act s 189(3).

6 Ibid s 189(1)(c).

7 Ie referred to in ibid s 187(1); s 189(1)(d). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14.

8 Ibid s 189(1)(d). For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

9 Ie under ibid Pt 2 (ss 69-141) (see PARAS 1447-1512); s 189(1)(e). As applied by s 189(1), the 2003 Act has effect with the modifications set out in Sch 1 Pt 2: s 189(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1536. Parties to international Conventions

1536. Parties to international Conventions

A territory may be designated by order made by the Secretary of State if it is not a category 1 territory¹ or a category 2 territory², and it is a party to an international Convention to which the United Kingdom is a party³. The relevant extradition legislation⁴ applies in relation to a territory so designated as if the territory were a category 2 territory⁵. As so applied to a territory, that legislation has effect as if certain specified provisions⁶ were omitted⁷; and the conduct that constituted an extradition offence⁸ for the purposes of certain provisions of the relevant extradition legislation⁹ were the conduct specified in relation to the territory in the order¹⁰ designating the territory¹¹. Conduct may be specified in relation to a territory in such an order designating the territory only if it is conduct to which the relevant Convention¹² applies¹³.

1 For the meaning of 'category 1 territory' see PARA 1401.

2 Extradition Act 2003 s 193(1)(a). For the meaning of 'category 2 territory' see PARA 1447. Section 193 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 193(1)(b). See the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

4 Ie the 2003 Act.

5 Ibid s 193(2).

6 Ie ibid ss 71(4) (see PARA 1449), 73(5) (see PARA 1450), 74(11)(b) (see PARA 1450), 84(7) (see PARA 1457), 86(7) (see PARA 1459), 137 (see PARA 1451) and 138 (see PARA 1452).

7 Ibid s 193(3)(a).

8 For the meaning of 'extradition offence' see PARAS 1406, 1407.

9 Ie the 2003 Act Pt 2 (ss 69-141): see PARAS 1447-1512.

10 Ie an order under ibid s 193(1).

11 Ibid s 193(3)(b).

12 The relevant Convention is the Convention referred to in ibid s 193(1)(b) which is specified in relation to the territory in the order under s 193(1) designating it: s 193(5).

13 Ibid s 193(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1537. Special extradition arrangements

1537. Special extradition arrangements

If the Secretary of State believes that (1) arrangements have been made between the United Kingdom and another territory for the extradition of a person to the territory¹, and (2) the territory is not a category 1 territory² or a category 2 territory³, then he may certify that the conditions in heads (1) and (2) above are satisfied in relation to the extradition of the person⁴. If the Secretary of State issues such a certificate, the relevant extradition legislation⁵ applies in respect of the person's extradition to the territory as if the territory were a category 2 territory⁶. As so applied, that legislation has effect as if certain specified provisions⁷ were omitted⁸; and with any other modifications specified in the certificate⁹. Such a certificate in relation to a person is conclusive evidence that the conditions in heads (1) and (2) above are satisfied in relation to the person's extradition¹⁰.

1 Extradition Act 2003 s 194(1)(a).

2 For the meaning of 'category 1 territory' see PARA 1401.

3 2003 Act s 194(1)(b). For the meaning of 'category 2 territory' see PARA 1447.

4 Ibid s 194(2).

5 Ie the 2003 Act.

6 Ibid s 194(3).

7 Ie ibid ss 71(4) (see PARA 1449), 73(5) (see PARA 1450), 74(11)(b) (see PARA 1450), 84(7) (see PARA 1457) and 86(7) (see PARA 1459).

8 Ibid s 194(4)(a).

9 Ibid s 194(4)(b). This enables the Secretary of State to modify the application of s 74(11) to extend, from 45 to 95 days, the period within which a judge is required to have received a request for extradition: *R (on the application of Brown, formerly Bajinya) v Governor of Belmarsh Prison* [2007] EWHC 498 (Admin), [2007] 2 WLR 1184.

10 2003 Act s 194(5).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1538. Human rights: appropriate tribunal

1538. Human rights: appropriate tribunal

The appropriate judge¹ is the only appropriate tribunal in relation to human rights proceedings² if the proceedings relate to extradition under the relevant extradition legislation³.

1 If the proceedings relate to extradition under the Extradition Act 2003 Pt 1 (ss 1-68A) (see PARAS 1401-1446), s 67 (see PARA 1405) applies for determining the appropriate judge: s 195(2). If the proceedings relate to extradition under Pt 2 (ss 69-141) (see PARAS 1447-1512), s 139 (see PARA 1448) applies for determining the appropriate judge: s 195(3).

2 Ie proceedings under the Human Rights Act 1998 s 7(1)(a) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 104A.3).

3 Ie under the 2003 Act Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2: s 195(1).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1539. Genocide, crimes against humanity and war crimes

1539. Genocide, crimes against humanity and war crimes

The following provision applies if a Part 1 warrant¹ in respect of a person is issued in respect of certain specified offences², or a valid request for a person's extradition³ is made in respect of those offences⁴. It is not an objection to extradition⁵ that the person could not have been punished for the offence under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he has been convicted⁶.

¹ For the meaning of 'Part 1 warrant' see PARA 1402.

² The specified offences are (1) an offence that if committed in the United Kingdom would be punishable as an offence under the International Criminal Court Act 2001 s 51 or 58 (genocide, crimes against humanity and war crimes) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454); (2) an offence that if committed in the United Kingdom would be punishable as an offence under s 52 or 59 (conduct ancillary to genocide, etc committed outside the jurisdiction) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 455); (3) an offence that if committed in the United Kingdom would be punishable as an ancillary offence, as defined in s 55 or 62, in relation to an offence falling within head (1) or (2); (4) any offence punishable in the United Kingdom under the Geneva Conventions Act 1957 s 1 (grave breach of scheduled conventions) (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 424); Extradition Act 2003 s 196(1)(a), (2). Section 196 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

³ As to a valid request for a person's extradition see PARA 1448.

⁴ 2003 Act s 196(1)(b).

⁵ I.e extradition under the 2003 Act.

⁶ Ibid s 196(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1540. Custody

1540. Custody

If a judge remands a person in custody¹, the person must be committed to the institution to which he would have been committed if charged with an offence before the judge². If a person in custody following his arrest³ escapes from custody, he may be retaken in any part of the United Kingdom in the same way as he could have been if he had been in custody following his arrest or apprehension under a relevant domestic warrant⁴. If (1) a person is in custody in one part of the United Kingdom⁵; (2) he is required to be removed to another part of the United Kingdom after being remanded in custody⁶; (3) he is so removed by sea or air⁷, then the person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed⁸. An order for a person's extradition⁹ is sufficient authority for an appropriate person¹⁰ to receive him¹¹, to keep him in custody until he is extradited¹², or to convey him to the territory to which he is to be extradited¹³.

1 Ie under the Extradition Act 2003.

2 Ibid s 197(1). Section 197 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 Ie under the 2003 Act Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512).

4 Ibid s 197(2). A relevant domestic warrant is a warrant for his arrest or apprehension issued in the part of the United Kingdom in question in respect of an offence committed there: s 197(3).

5 Ibid s 197(4)(a). This provision applies whether the person is in custody in one part of the United Kingdom under the 2003 Act or otherwise: s 197(4)(a).

6 Ie under the 2003 Act: s 197(4)(b).

7 Ibid s 197(4)(c).

8 Ibid s 197(5).

9 Ie under the 2003 Act.

10 An appropriate person is a person to whom the order is directed, or a constable: ibid s 197(7).

11 Ibid s 197(6)(a).

12 Ie under the 2003 Act: s 197(6)(b).

13 Ie under the 2003 Act: s 197(6)(c). If an order is made under Pt 1 (ss 1-68A) or Pt 2 (ss 69-141) for the extradition of a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom, the order is sufficient authority for the person to be removed from the prison or other institution where he is detained: s 197A (added by the Police and Justice Act 2006 Sch 13 para 25).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1541. Receivable documents

1541. Receivable documents

A Part 1 warrant¹ may be received in evidence in extradition proceedings². Any other document issued in a category 1 or a category 2 territory³ may be received in evidence in extradition proceedings if it is duly authenticated⁴. A document issued in a category 1 or category 2 territory is duly authenticated if, and only if, it either purports to be signed by a judge, magistrate or officer of the territory⁵, or purports to be certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs⁶, or purports to be authenticated by the oath or affirmation of a witness⁷.

1 For the meaning of 'Part 1 warrant' see PARA 1402.

2 *Ie* under the Extradition Act 2003: s 202(1).

3 For the meaning of 'category 1 territory' see PARA 1401; for the meaning of 'category 2 territory' see PARA 1447.

4 2003 Act s 202(2), (3). Section 202(2), (3) does not prevent a document that is not duly authenticated from being received in evidence in proceedings under the 2003 Act: s 202(5).

5 *Ibid* s 202(4)(a) (s 202(4)(a) amended, s 202(4)(aa) added by the Police and Justice Act 2006 Sch 13 para 26).

6 2003 Act s 202(4)(aa).

7 *Ibid* s 202(4)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1542. Documents sent by electronic means

1542. Documents sent by electronic means

If a document to be sent in connection with extradition proceedings¹ is sent by facsimile transmission², the extradition legislation³ has effect as if the document received by facsimile transmission were the document used to make the transmission⁴.

If a Part 1 warrant⁵ is issued and the information contained in the warrant is transmitted to the designated authority by electronic means other than by facsimile transmission⁶, and is received by the designated authority in a form in which it is intelligible and which is capable of being used for subsequent reference⁷, the extradition legislation⁸ has effect as if the information received by the designated authority were the Part 1 warrant⁹. A copy of the information received by the designated authority may be received in evidence as if it were the Part 1 warrant¹⁰.

1 Ie under the Extradition Act 2003.

2 Ibid s 203(1).

3 Ie the 2003 Act.

4 Ibid s 203(2).

5 For the meaning of 'Part 1 warrant' see PARA 1402.

6 2003 Act s 204(1)(a).

7 Ibid s 204(1)(b).

8 Ie the 2003 Act.

9 Ibid s 204(2).

10 Ibid s 204(3).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1543. Written statements and admissions

1543. Written statements and admissions

Certain specified provisions relating to proof by written statement in criminal proceedings¹ and proof by formal admission in criminal proceedings² apply in relation to extradition proceedings³ as they apply in relation to proceedings for an offence⁴.

1 Ie the Criminal Justice Act 1967 s 9 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535); Extradition Act 2003 s 205(1), (2)(a). Section 205 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 Ie the Criminal Justice Act 1967 s 10 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1538); 2003 Act s 205(1), (2)(b).

3 Ie under the 2003 Act.

4 Ibid s 205(1). As applied by s 205(1) in relation to proceedings under the 2003 Act and the 1967 s 10 have effect as if (1) references to the defendant were to the person whose extradition is sought, or who has been extradited; (2) references to the prosecutor were to the category 1 or category 2 territory concerned; (3) references to the trial were to the proceedings under the 2003 Act for the purposes of which the admission is made; (4) references to subsequent criminal proceedings were to subsequent proceedings under the 2003 Act: s 205(3). For the meaning of 'category 1 territory' see PARA 1401; and for the meaning of 'category 2 territory' see PARA 1447.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1544. Burden and standard of proof

1544. Burden and standard of proof

If, in extradition proceedings¹, a question arises as to burden or standard of proof², the question must be decided by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence³. Any enactment or rule of law so applied to extradition proceedings must be applied as if the person whose extradition is sought, or who has been extradited, were accused of an offence⁴, and the category 1 or category 2 territory⁵ concerned were the prosecution⁶.

1 Ie under the Extradition Act 2003.

2 Ibid 206(1). Section 206 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 206(2). Section 206(2), (3) are subject to any express provision of the 2003 Act: s 206(4).

4 Ibid s 206(3)(a).

5 For the meaning of 'category 1 territory' see PARA 1401; and for the meaning of 'category 2 territory' see PARA 1447.

6 2003 Act s 206(3)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1545. Extradition for more than one offence

1545. Extradition for more than one offence

The Secretary of State may by order provide for the extradition legislation¹ to have effect with specified modifications in relation to a case where a Part 1 warrant² is issued in respect of more than one offence³, or a request for extradition is made in respect of more than one offence⁴.

1 Ie the Extradition Act 2003.

2 For the meaning of 'Part 1 warrant' see PARA 1402.

3 2003 Act s 207(a). Section 207 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150.

4 2003 Act s 207(b). In exercise of the power so conferred the Secretary of State has made the Extradition Act 2003 (Multiple Offences) Order 2003, SI 2003/3150.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1546. National security

1546. National security

If the Secretary of State believes that the conditions mentioned in heads (1)-(3) below are satisfied in relation to a person¹, he may certify that those conditions are satisfied in relation to the person². If the Secretary of State issues such a certificate he may direct that a Part 1 warrant issued in respect of the person and in respect of the offence is not to be proceeded with³, or direct that a request for the person's extradition in respect of the offence is not to be proceeded with⁴. If the Secretary of State issues such a certificate he may order the person's discharge, instead of or in addition to giving a direction⁵.

The conditions are: (1) that the person's extradition is sought or will be sought under specified extradition legislation⁶ in respect of an offence⁷; (2) that in engaging in the conduct constituting, or alleged to constitute, the offence the person was acting for the purpose of assisting in the exercise of a function conferred or imposed by or under an enactment⁸; or that as a result of an authorisation given by the Secretary of State the person is not liable under the criminal law of any part of the United Kingdom for the conduct constituting, or alleged to constitute, the offence⁹; (3) that the person's extradition in respect of the offence would be against the interests of national security¹⁰.

1 Extradition Act 2003 s 208(1). Section 208 is modified in relation to cases where a Part 1 warrant is issued in respect of more than one offence or where a request for extradition is made in respect of more than one offence: SI 2003/3150. For the meaning of 'Part 1 warrant' see PARA 1402.

2 2003 Act s 208(5). Such a certificate must be made under the hand of the Secretary of State: s 208(10)(a).

3 Ibid s 208(6)(a). A direction under s 208(6) must be made under the hand of the Secretary of State: s 208(10)(b). The following rules apply if the Secretary of State gives a direction under s 208(6)(a) in respect of a warrant: (1) if the designated authority has not issued a certificate under s 2 (see PARA 1402) in respect of the warrant it must not do so; (2) if the person is arrested under the warrant or under s 5 (see PARA 1405) there is no requirement for him to be brought before the appropriate judge and he must be discharged; (3) if the person is brought before the appropriate judge under s 4 (see PARA 1404) or 6 (see PARA 1405) the judge is no longer required to proceed or continue proceeding under ss 7 (see PARA 1408) and 8 (see PARA 1409); (4) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under ss 10-25 (see PARAS 1411-1418); (5) if the person has consented to his extradition, the judge is no longer required to order his extradition; (6) if an appeal to the High Court or Supreme Court has been brought, the court is no longer required to hear or continue hearing the appeal; (7) if the person's extradition has been ordered there is no requirement for him to be extradited: s 208(8) (amended as from 1 October 2009 (see SI 2009/1604) by Constitutional Reform Act 2005 Sch 9 para 81). For the meaning of 'appropriate judge' see PARA 1448 NOTE 14. For the meaning of 'extradition hearing' see PARA 1451 NOTE 4.

4 2003 Act s 208(6)(b). The following rules apply if the Secretary of State gives a direction under s 208(6)(b) in respect of a request (1) if he has not issued a certificate under s 70 (see PARA 1448) in respect of the request he is no longer required to do so; (2) if the person is arrested under a warrant issued under s 71 (see PARA 1449) or under a provisional warrant there is no requirement for him to appear or be brought before the appropriate judge and he must be discharged; (3) if the person appears or is brought before the appropriate judge the judge is no longer required to proceed or continue proceeding under ss 72 (see PARA 1449), 74 (see PARA 1450), 75 (see PARA 1453) and 76 (see PARA 1453); (4) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under ss 78-91 (see PARAS 1455-1463); (5) if the person has given his consent to his extradition to the appropriate judge, the judge is no longer required to send the case to the Secretary of State for his decision whether the person is to be extradited; (6) if an appeal to the High Court or Supreme Court has been brought, the court is no longer required to hear or continue hearing the appeal; (7) if the person's extradition has been ordered there is no requirement for him to be extradited: s 208(9) (as amended: see NOTE 3). For the meaning of 'provisional warrant' see PARA 1450.

5 Ie under the 2003 Act s 208(6): s 208(7). Such an order must be made under the hand of the Secretary of State: s 208(10)(c).

- 6 Ie ibid Pt 1 (ss 1-68A) (see PARAS 1401-1446) or Pt 2 (ss 69-141) (see PARAS 1447-1512).
- 7 Ibid s 208(2).
- 8 Ibid s 208(3)(a).
- 9 Ibid s 208(3)(b).
- 10 Ibid s 208(4).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1547. Reasonable force

1547. Reasonable force

A person may use reasonable force, if necessary, in the exercise of a power conferred by the extradition legislation¹.

¹ ie the Extradition Act 2003: s 209.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1548. Rules of court

1548. Rules of court

Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under the extradition legislation¹.

¹ ie the Extradition Act 2003: s 210(1).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1549. Service of notices

1549. Service of notices

Service of a notice on a person¹ may be effected by (1) delivering the notice to the person²; (2) leaving it for him with another person at his last known or usual place of abode³; or (3) sending it by post in a letter addressed to him at his last known or usual place of abode⁴.

1 See under the Extradition Act 2003 s 54 (see PARA 1440), 56 (see PARA 1442), 58 (see PARA 1443), 129 (see PARA 1495), 130 (see PARA 1496) or 131 (see PARA 1497): s 211.

2 Ibid s 211(a).

3 Ibid s 211(b).

4 Ibid s 211(c).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1550. Article 95 alerts: transitional provision

1550. Article 95 alerts: transitional provision

In a case where an article 95 alert¹ is issued before 1 January 2004 by an authority of a category 1 territory², the extradition legislation³ applies as if the alert were a Part 1 warrant⁴ issued by the authority⁵ and any information sent with the alert relating to the case were included in the warrant⁶.

1 An article 95 alert is an alert issued pursuant to the Convention implementing the Schengen agreement of 14 June 1985 art 95: Extradition Act 2003 s 212(4).

2 Ibid s 212(1). For the meaning of 'category 1 territory' see PARA 1401.

3 Ie the 2003 Act.

4 For the meaning of 'Part 1 warrant' see PARA 1402.

5 2003 Act s 212(2)(a). As applied by s 212(2), the 2003 Act has effect with the following modifications: (1) in ss 2(7), (8) (see PARA 1402), 28(1) (see PARA 1420), 30(1), (4)(d) (see PARA 1421), 32(2)(b) (see PARA 1423), 33(6)(b) (see PARA 1423), 35(4)(b) (see PARA 1425), 36(3)(b) (see PARA 1426), 47(3)(b) (see PARA 1435), 49(3)(b) (see PARA 1436) and 190(3) for 'authority which issued the Part 1 warrant' read 'authority at the request of which the alert was issued'; (2) omit s 5 (see PARA 1405); (3) in ss 33(4)(b) (see PARA 1423), 42(2)(a) (see PARA 1430), 43(2)(a), (4) (see PARA 1431) and 61(1)(d), (e) (see PARA 1446), for 'authority which issued the warrant' read 'authority at the request of which the alert was issued'; (4) in s 66(2) (see PARA 1406), for 'believes has the function of issuing arrest warrants in that territory' read 'believes is the authority at the request of which the alert was issued': s 212(3).

6 Ibid s 212(2)(b).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1551. Form of documents

1551. Form of documents

The Secretary of State may by regulations prescribe the form of any document required for the purposes of the extradition legislation¹.

¹ ie the Extradition Act 2003: s 217.

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1552. Channel Islands and Isle of Man

1552. Channel Islands and Isle of Man

An Order in Council may provide for the extradition legislation¹ to extend to any of the Channel Islands or the Isle of Man with the modifications, if any, specified in the Order².

¹ ie the Extradition Act 2003.

² Ibid s 222. An Order in Council under the 2003 Act may make different provision for different purposes, and may include supplementary, incidental, saving or transitional provisions: s 224(2).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1553. Orders and regulations

1553. Orders and regulations

Subordinate legislation¹ may make different provision for different purposes², and may include supplementary, incidental, saving or transitional provisions³. A power to make subordinate legislation is exercisable by statutory instrument⁴. Certain specified orders⁵ may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House⁶. A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation⁷. An order made by the Secretary of State under certain specified provisions⁸ may provide that the extradition legislation⁹ has effect in relation to a territory designated by the order with specified modifications¹⁰.

1 References in the Extradition Act 2003 s 223 to subordinate legislation are to (1) an order of the Secretary of State under the 2003 Act, other than (a) an order for a person's extradition or discharge, (b) an order deferring proceedings on a warrant or request, (c) an order deferring a person's extradition in pursuance of a warrant or request; (2) an order of the Treasury under the 2003 Act; (3) regulations under the 2003 Act: s 223(1), (2).

2 Ibid s 223(3)(a).

3 Ibid s 223(3)(b).

4 Ibid s 223(4).

5 Ie (1) an order under ibid s 1(1) (see PARA 1401), s 69(1) (see PARA 1447), s 71(4) (see PARA 1449), s 73(5) (see PARA 1450), s 74(11)(b) (see PARA 1450), s 84(7) (see PARA 1457), s 86(7) (see PARA 1459), s 142(9) (see PARA 1503), s 173(4) (see PARA 1526) or s 215(2); (2) an order under s 219(2) which contains any provision, whether alone or with other provisions, amending or repealing any Act or provision of an Act: s 223(6).

6 Ibid s 223(5).

7 Ie other than an order mentioned in ibid s 223(6) or an order under s 221 (commencement orders): s 223(7).

8 Ie ibid s 1(1) (see PARA 1401) or 69(1) (see PARA 1447).

9 Ie the 2003 Act.

10 Ibid s 223(9).

Halsbury's Laws of England/EXTRADITION (VOLUME 17(2) (REISSUE))/15. OTHER MATTERS RELATING TO EXTRADITION/1554. Finance

1554. Finance

Any expenditure incurred by the Lord Chancellor under the extradition legislation¹ and any increase attributable to that legislation in the sums payable out of money provided by Parliament under any other enactment² are to be paid out of money provided by Parliament³.

1 Ie the Extradition Act 2003: s 225(a).

2 Ibid s 225(b).

3 Ibid s 225.